

\*\*\*\*\* Electronically Recorded Document \*\*\*\*\*

# Cameron County

Sylvia Garza-Perez  
Cameron County Clerk  
Brownsville, Texas

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\*\*\*THIS PAGE IS PART OF THE INSTRUMENT\*\*\*



I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Official Public Records in Cameron County, Texas.

A handwritten signature in cursive script, appearing to read "Sylvia Garza-Perez", is written in black ink.

**SIERRA TITLE**

**GF** 2016 2522

**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.**

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

THE STATE OF TEXAS       §  
  §  
COUNTY OF CAMERON       §

Section 1.

A. KNOW ALL PERSONS BY THESE PRESENTS, THAT I, WE, or EITHER OF US, S&P Foreign Assets South Padre Island LLC, A Texas Limited Liability Company, 200 Tesoro Ave, Rancho Viejo, Texas 78575 of the County of Cameron, State of Texas, sometimes hereinafter called Grantors (whether one or more) for the purposes of securing the Indebtedness (as hereinafter defined), and in consideration of the sum of TEN DOLLARS (\$10.00) to us in hand paid by the Trustee hereinafter named, the receipt and sufficiency of which is hereby acknowledged, and for the further consideration of the uses, purposes and the trusts hereinafter set forth, have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL and CONVEY unto David Guerra, Trustee, of International Bank of Commerce, One South Broadway, McAllen, Texas 78505, and his substitutes or successors, all of the following described property situated in Cameron County, Texas (hereinafter the "Property"), to-wit:

Condominium Unit 202, South Tower, Los Corales Condominiums, South Padre Island, Cameron County, Texas, according to Condominium Declaration of Los Corales Condominium dated January 13, 2010, recorded in Volume 16601, Page 1, Official Records of Cameron County, Texas, together with Assigned Parking Space No. 48-S, and assigned Ground Floor Storage Space No. 31, and Same Floor Storage Space No. 2 , together with an undivided interest in the general common elements, according to and more particularly described in said condominium declaration.

**TO HAVE AND TO HOLD** the above described Property, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to his substitutes or successors forever, and Grantors do hereby bind themselves, their heirs, executors, administrators, successors and assigns to warrant and forever defend the said premises unto the said Trustee, his substitutes or successors and assigns forever, against the claim or claims of all persons claiming or to claim the same any part thereof.

B. This conveyance, however, is made in TRUST to secure payment of the following-described promissory note(s) (hereinafter referred to as the "Note(s)", whether one or more):

That certain Real Estate Lien Note/Promissory Note dated the 26th day of October, 2016, in the original principal sum of Five Hundred Thousand Dollars and No Cents (\$500,000.00), executed by the makers of said Note, S & M Projected Assets, LLC, a Series of Assets of S & M Foreign Assets, LLC A Texas Series Limited Liability Company, who, together with the above named Grantors and the guarantors, sureties and endorsers of said Note, shall hereinafter collectively and interchangeably be referred to as Grantors, payable to the order of International Bank of Commerce, One South Broadway, McAllen, Texas 78505, hereinafter referred to as Beneficiary, in the City of McAllen, Hidalgo County, Texas and payable as therein provided, including late charges; bearing interest as therein stipulated, providing for acceleration of maturity and for reasonable and necessary attorney's fees;

C. Should Grantors do and perform all of the covenants and agreements herein contained, and make payment of the Indebtedness as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect, and shall be released at the expense of Grantors, by the holder thereof, hereinafter called Beneficiary (whether one or more). All references herein to the "Note" shall mean the first promissory note listed above.

Section 2.

A. Grantors COVENANT and AGREE as follows:

(1) That they are lawfully seized of said Property, in fee simple absolute, and have the right to convey the same; that said Property is free from all liens and encumbrances, except as herein provided.

(2) To protect the title and possession of said Property, and to pay when due all taxes and assessments now existing or hereafter levied or assessed upon said Property, or the interest therein created by this Deed Of Trust, and to preserve and maintain the lien hereby created as a first and prior lien on said Property including any improvements hereafter made a part of the realty.

(3) To keep the improvements on said Property in good repair and condition, and not to permit or commit any waste

thereof; to keep the buildings thereon occupied so as not to impair the insurance carried thereon.

(4) To insure and keep insured all improvements now located upon or hereafter erected upon said Property against loss or damage by fire and windstorm, and any other hazard or hazards as may be reasonably required from time to time by Beneficiary during the term of the Indebtedness, to the extent of the total amount of the Indebtedness, or to the extent of the full insurable value of said improvements, whichever is the lesser, containing a standard mortgagee clause in favor of Beneficiary; and Grantors agree that any proceeds which Beneficiary may receive under such policy or policies may be applied by Beneficiary, at its option, to reduce the Indebtedness, whether then matured or to mature in the future, and in such manner as Beneficiary may elect, or Beneficiary may permit Grantors to use said proceeds to repair or replace all improvements damaged or destroyed and covered by said policy or policies. Grantors shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Beneficiary may request with Beneficiary being named as additional insured in such liability insurance policies. Additionally, Grantors shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Beneficiary may require. Policies shall be written by such insurance companies and in such form as is approved by Beneficiary. Grantors shall deliver to Beneficiary certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Beneficiary and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Beneficiary will not be impaired in any way by any act, omission or default of Grantors or any other person. Should the Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantors agree to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Beneficiary that the Property is located in a special flood hazard area, for full unpaid principal balance of the Loan and any prior liens on the property securing the Loan, up to the maximum policy limits set under the national Flood Insurance Program, or as otherwise required by Beneficiary, and to maintain such insurance for the term of the Loan. Upon Beneficiary's request Grantors shall deliver true and complete copies of any policies of insurance Grantors are required to maintain hereunder.

TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) GRANTORS ARE REQUIRED TO (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED HEREIN; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER OR OTHERWISE AS PROVIDED HEREIN; AND (iii) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS PROVIDED HEREIN; (B) SUBJECT TO THE PROVISIONS HEREOF, GRANTORS MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) SUBJECT TO THE PROVISIONS HEREOF, IF GRANTORS FAIL TO MEET ANY REQUIREMENT LISTED IN THE FOREGOING SUBPARTS (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTORS AT GRANTORS' EXPENSE.

(5) That Beneficiary may employ counsel for advice or other legal service at Beneficiary's discretion in connection with (i) any dispute as to the Indebtedness hereby secured or lien securing same or this instrument, or (ii) any litigation or arbitration proceeding to which the Beneficiary may be made a party on account of this lien or which may affect the title to the Property on account of this lien or which may affect the title to the Property securing the Indebtedness hereby secured or which may affect said debt or lien. Any reasonable and necessary attorney's fees so incurred shall be added and be part of the Indebtedness hereby secured.

(6) In addition to the land and improvements above described, the lien of this Deed Of Trust covers and includes all abstracts and title papers furnished or to be furnished in connection with the making of the loan evidenced by said Note(s) (the "Loan"), the payment of which is secured hereby. The Note(s), this Deed Of Trust, and all other documents executed by Grantors in connection with the Loan are collectively referred to herein as the "Loan Documents".

(7) Grantors agree to pay on demand for all abstracts, title policies, appraisals, recording fees and attorney's fees incurred in connection with either the closing of the Loan or the renewal, extension, modification and/or rearrangement of any part of the Indebtedness, or, in the alternative, such amounts expended by Beneficiary shall be added to and be a part of the Indebtedness hereby secured.

(8) That in the event Grantors shall fail to keep the improvements on the Property hereby conveyed in good repair and condition, or to pay promptly when due all taxes and assessments thereon, as aforesaid, or to preserve the prior lien of this Deed Of Trust on said Property, or to keep the buildings and improvements thereon insured, as aforesaid, or to deliver the policy or policies of insurance or any renewals thereof to Beneficiary, as aforesaid, then Beneficiary may, at its option, but without being required to do so, make such repairs, pay such taxes and assessments, purchase any tax title thereon, remove any prior liens, and prosecute or defend any suits in relation to the preservation of the prior lien of this Deed Of Trust on said Property, or insure and keep insured the improvements thereon in any amount not to exceed that amount above stipulated (including, without limitation, to the extent allowed by law, the purchase of Single Interest Insurance which may provide coverage only for Beneficiary); that any sums which may be so paid out by Beneficiary, including the costs, expenses and attorney's fees paid in any suit affecting said Property when necessary to protect the lien hereof and all other expenses and costs agreed to be paid by Grantors under the Deed Of Trust which are not paid when due, shall bear interest from the dates of such payments at the prematurity interest rate stated in the Note hereby secured, shall be paid by Grantors to Beneficiary upon demand, at the same place at which the Note is payable, and shall be deemed a part of the Indebtedness hereby secured and recoverable as such in all respects.

(9) Grantors expressly agree to furnish Beneficiary annually validated receipts evidencing payment of all taxes assessed against, and insurance covering, the said Property. Such tax receipts shall be furnished on or before fifteen (15) days prior to the date such taxes become delinquent. The insurance receipt shall be furnished on or before ten (10) days prior to the date the then current insurance coverage expires. If Grantors fail to furnish such receipts, Beneficiary may require Grantors to deposit monthly with Beneficiary on the payment dates specified in the Note hereby secured, in addition to the monthly payment of principal and interest provided in the Note hereby secured, a sum equal to 1/12 of the estimated annual taxes and insurance premiums covering such Property, such estimates to be made by Beneficiary. Beneficiary

shall hold such deposits, without bond and without accrual of interest thereon, to pay taxes and insurance premiums as they become due, until the Indebtedness is fully paid, and thereupon the balance shall be delivered to Grantors. Grantors shall not, without Beneficiary's prior written consent, authorize any person to pay ad valorem taxes assessed against the Property pursuant Section 32.06 of the Texas Tax Code, as may be amended from time to time (the "Tax Lien Transfer Statute"), or any successor statute. Unless Beneficiary shall give prior written consent thereto, any such authorization given by Grantors shall be void and of no force or effect, and any transfer of tax lien under such authority, and/or any deed of trust executed by Grantors for the benefit the transferee of any such tax lien (a "Transferee"), shall likewise be void and of no force or effect. In order to be effective, written consent by the Beneficiary under this subsection must be duly executed by an officer of Beneficiary and recorded prior to date of the authorization by Grantors to which it relates in the real property records of each county in which the Property, or any portion thereof, is located. The transfer of a tax lien with respect to the Property pursuant to the Tax Lien Transfer Statute in violation of this subsection shall constitute an Event of Default hereunder, and Beneficiary may immediately and without notice of any kind exercise any and all rights or remedies available under Section 3 hereof notwithstanding any agreement herein by Beneficiary to provide Grantors with notice of and an opportunity to cure an Event of Default prior to exercising such remedies. Grantors authorize Beneficiary to deal directly with any Transferee, and hereby irrevocably constitute and appoint Beneficiary (and all officers, employees or agents designated by Beneficiary), with full power of substitution, as Grantors' true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantors and in the name of Grantors or their own name, from time to time in Beneficiary's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to (a) deal in any manner with any Transferee; (b) pay or discharge any taxes, liens, or other encumbrances levied or placed on or threatened against Grantors or the Property or any portion thereof in connection with any transferred tax lien in connection with all or any portion of the Property, including, without limitation, payment to any Transferee; (c) defend any suit, action or proceeding brought against Grantors if Grantors do not defend such suit, action or proceeding or if Beneficiary believes that Grantors are not pursuing such defense in a manner that will maximize the recovery to Beneficiary, and settle, compromise or adjust any suit, action or proceeding and, in connection therewith, give such discharges or releases as Beneficiary may deem appropriate; (d) communicate in its own name with any Transferee with regard to the assignment of any tax lien in connection with the Property or any portion thereof, and other matters relating thereto, including, without limitation, requesting payoff statements from any Transferee; and (e) do, at Beneficiary's option and Grantors' expense, at any time or from time to time, all acts and other things that Beneficiary deems necessary in connection with this power of attorney, all as fully and effectively as Grantors might do. Grantors hereby ratify, to the extent permitted by law, all that said Beneficiary shall lawfully do or cause to be done by virtue hereof. No person to whom this power of attorney is presented, as authority for Beneficiary to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from Grantors as to the authority of Beneficiary to take any action set forth herein, or as to the existence of or fulfillment of any condition to this power of attorney, which is intended to grant to Beneficiary unconditionally the authority to take and perform the actions contemplated herein, and Grantors irrevocably waive any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this power of attorney. The power of Beneficiary granted hereby is coupled with an interest, and may not be revoked or canceled by Grantors without Beneficiary's prior written consent recorded of record in the real property records of each county in which the Property, or any portion thereof, is located.

(10) Subject to applicable law and notwithstanding the preceding paragraph, at Beneficiary's option, and in its sole discretion, Beneficiary may require Grantors to pay Beneficiary on the day monthly payments are due under the Note, until the Indebtedness is paid in full, a sum (hereinafter referred to as "Funds") for (a) yearly taxes and assessments which may attain priority over the lien of this Deed Of Trust as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Grantors to Beneficiary, in accordance with the immediately preceding paragraph, in lieu of the payment of mortgage insurance premiums. The items described above in this paragraph are herein called "Escrow Items". Beneficiary may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Grantor's escrow account under the Federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601, et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. In such event, Beneficiary may, at any time, collect and hold Funds in any amount not to exceed such lesser amount. Beneficiary may from time to time estimate the amount of Funds due on the basis of then current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

(11) The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Beneficiary, if Beneficiary is such an institution) or in any Federal Home Loan Bank. Beneficiary shall apply the Funds to pay the Escrow Items. Beneficiary may not charge Grantors for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Beneficiary pays Grantors interest on the Funds and applicable law permits Beneficiary to assess such a charge. However, Beneficiary may require Grantors to pay a one-time charge for an independent real estate tax reporting service used by Beneficiary in connection with the Loan, unless applicable law provides otherwise. Unless agreement is made or applicable law requires interest to be paid, Beneficiary shall not be required to pay Grantors any interest or earnings on the Funds. Grantors and Beneficiary may agree in writing, however, that interest shall be paid on the Funds. If required by law, Beneficiary shall give to Grantors, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all Indebtedness secured by this Deed Of Trust.

(12) If the Funds held by Beneficiary exceed the amounts permitted to be held by applicable law, Beneficiary shall account to Grantors for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Beneficiary at any time is not sufficient to pay the Escrow Items when due, Beneficiary may so notify Grantors in writing, and in such case Grantors shall pay to Beneficiary the amount necessary to make up the deficiency. Grantors shall make up the deficiency in no more than twelve (12) monthly payments, at Beneficiary's sole discretion.

(13) Upon payment in full of all Indebtedness secured by this Deed Of Trust, Beneficiary shall promptly refund to Grantors any Funds held by Beneficiary. If, under foreclosure proceedings, Beneficiary shall acquire or sell the Property, Beneficiary shall, upon the acquisition or sale of the Property, apply any Funds held by Beneficiary at the time of the acquisition or sale as a credit against the Indebtedness secured by this Deed Of Trust. Beneficiary, in its sole discretion, may apply any Funds to pay the balance of the Indebtedness hereby secured if the principal balance of the Indebtedness

hereby secured falls below the amount of the Funds held by Beneficiary.

(14) Grantors shall not impose, or permit to be imposed, any restrictive covenants upon the Property herein described or execute or file, or permit to be filed, any subdivision plat or condominium declaration or other instrument affecting said Property without the prior written consent of Beneficiary.

(15) All agreements between any of the parties hereto are hereby limited by the provisions of this paragraph which shall override all such agreements, whether now existing or hereafter arising. If, from a construction of any document related to any transaction between Lender, Grantors and/or any other person or entity executing this Deed Of Trust, any term(s) or provision(s) of any document is in conflict with applicable law, such document shall be automatically reformed and modified so as to comply with applicable law, without the necessity of execution of any amendment or new document.

(16) GRANTORS AND EACH SURETY, ENDORSER AND GUARANTOR OF THE NOTE(S) HEREBY EXPRESSLY WAIVE ALL NOTICES OF NON-PAYMENT, PRESENTMENTS FOR PAYMENT, PRESENTATIONS FOR PAYMENT, DEMANDS FOR PAYMENT, NOTICES OF INTENTION TO ACCELERATE MATURITY, NOTICES OF ACTUAL ACCELERATION OF MATURITY, PROTESTS, AND NOTICES OF PROTEST, TO THE EXTENT PERMITTED BY LAW.

(17)(a) Subject to subparagraph 17(b), if the Loan finances a commercial real estate project, as such term is used in the definition of "high volatility commercial real estate (HVCRE) exposure" set out in 12 C.F.R. 3.2 and similar federal regulations (the "HVCRE Definition"), the following provision shall apply:

Grantors shall not withdraw any of the capital contributed by Grantors to the commercial real estate project, or any capital subsequently generated by the commercial real estate project, prior to the occurrence of any of the following events:

- (i) The Loan is converted to permanent financing satisfactory to Beneficiary in Beneficiary's sole discretion;
- (ii) The Property is sold and the Loan is paid in full; or
- (iii) The Loan is otherwise paid in full.

(b) Subparagraph (17)(a) shall not apply if the Loan is not a "high volatility commercial real estate (HVCRE) exposure" pursuant to paragraphs (1), (2) or (3) of the HVCRE Definition.

### Section 3.

A. The occurrence of any of the following events shall constitute an event of default ("Event of Default") under this Deed of Trust:

- (1) Grantors, or any of them, fail to pay any of the Indebtedness when the same shall become due and payable; or
- (2) Grantors, or any of them, (i) fail to perform any of Grantors' obligations under the Note(s) or other Loan Documents, or any other event of default or breach occurs under the Note(s) or the other Loan Documents, or (ii) to the extent allowed by law, and except as to loans for homestead, homestead equity, home equity lines of credit, and/or household or other consumer goods, fail to perform any of Grantors' obligations under any other promissory note, security agreement, loan agreement or other agreement between Beneficiary and Grantors or any other event of default or breach occurs thereunder; or
- (3) any (i) statement, representation or warranty made by Grantors in this Deed of Trust, the Note(s), the other Loan Documents, or in any other agreement between Beneficiary and Grantors, or (ii) any information contained in any financial statement or other document delivered to Beneficiary by or on behalf of Grantors contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement, representation or warranty therein not misleading in light of the circumstances in which they were made; or
- (4) Grantors, or any of them, (i) die or become physically or mentally incapacitated; or (ii) in the case of Grantors who are not natural persons, dissolve, terminate or in any other way cease to legally exist or have their entity powers or privileges suspended or revoked for any reason; or (iii) make an assignment for the benefit of creditors, or enter into any composition, marshalling of assets or similar arrangement in respect of their creditors generally; or (iv) become insolvent or generally do not pay their debts as such debts become due; or (v) conceal, remove, or permit to be concealed or removed, any part of Grantors' property, with intent to hinder, delay or defraud their creditors or any of them, or make or suffer a transfer of any of Grantors' property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or make any transfer of Grantors' property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or
- (5) a trustee, receiver, agent or custodian is appointed or authorized to take charge of any property of Grantors, or any of them, for the purpose of enforcing a lien against such property or for the purpose of administering such property for the benefit of its creditors; or
- (6) an order (i) for relief as to Grantors, or any of them, is granted under Title 11 of the United States Code or any similar law, or (ii) declaring Grantors, or any of them, to be incompetent is entered by any court; or
- (7) Grantors, or any of them, file any pleading seeking, or authorize or consent to, any appointment or order described in subsections A (5) or A (6) of this section, whether by formal action or by the admission of the material allegations of a pleading or otherwise; or
- (8) application is made for or there is an enforcement of any lien, levy, seizure, garnishment or attachment of any property of the Grantors, or any of them, for the purposes of collecting a lawful debt; or
- (9) any action or proceeding seeking any appointment or order described in subsections A (5) or A (6) of this section is commenced without the authority or consent of Grantors, and is not dismissed within thirty (30) days after its commencement; or
- (10) Grantors, or any of them, shall become involved (whether as plaintiff or defendant) in any material litigation (including, without limitation, matrimonial litigation) or arbitral or regulatory proceedings that, if determined adversely to Grantors, or any of them, could materially and adversely affect the financial position of Grantors, or any of them, or could affect the ability of Grantors, or any of them, to repay the Indebtedness, or could adversely affect the Property or the Collateral or any portion thereof or Beneficiary's lien or security interest therein; or

- (11) Grantors, or any of them, in Beneficiary's opinion, have suffered a material change in financial condition which, in Beneficiary's opinion, impairs the ability of Grantors, or any of them, to repay the Indebtedness or to properly perform Grantors' obligations under this Deed of Trust, the Note(s), or the other Loan documents; or
- (12) Beneficiary believes, as a result of any material change in condition whether or not described herein, that Beneficiary will be adversely affected, that the Indebtedness is inadequately secured, or that the prospect of payment of any of the Indebtedness or performance of any of Grantors' obligations under the Loan Documents is impaired; or
- (13) to the extent allowed by law, and except as to loans for homestead, homestead equity, home equity lines of credit, and/or household or other consumer goods, as to each of the Grantors with regard to any other credit facility with any other lender, any monetary default and/or any non-monetary default occurs which results in acceleration of the indebtedness by any such other lender; and Grantors agree to notify Beneficiary of any default on any credit facility with any other lender within fifteen (15) days after the occurrence of the default; or
- (14) the Property or the Collateral (as hereinafter defined), or any portion thereof, is sold, conveyed, or otherwise disposed of without the prior written consent of the Beneficiary, or there occurs any levy, seizure or attachment thereof or thereon; or
- (15) the Property or the Collateral becomes, in the judgment of Beneficiary, unsatisfactory or insufficient in character or value; or
- (16) Grantors, or any of them, fail to timely deliver any and all financial statements, income tax returns, inventory reports, cash flow information, balance sheets, accounts receivable reports, or any other business, tax or financial information requested by Beneficiary.

B. Upon the occurrence of an Event of Default Beneficiary may, at Beneficiary's option, accelerate the maturity of all or any portion of the Indebtedness hereby secured and declare all such sums immediately due and payable, and in the event of default in the payment of any portion of the Indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or his successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the above described and conveyed Property, then subject to the lien hereof, for at least twenty-one (21) days preceding the date of sale by posting written or printed notice thereof at the County Courthouse of the county where the Property is located and by filing a copy of such notice in the office of the County Clerk of the county where the Property is situated, which notice may be posted by the Trustee acting, or by any person acting for him, and the Beneficiary has, at least twenty-one (21) days preceding the date of sale, served written or printed notice of the proposed sale by certified mail on each person and/or entity(s) obligated to pay the Indebtedness secured by this Deed Of Trust according to the records of Beneficiary by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such person(s) and/or entity(s) at such person's and/or entity(s) 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 Trustee shall sell the above described property, then subject to the lien hereof, at public auction in accordance with such notice at the Courthouse of said county where such Property is situated (provided where said Property is situated in more than one county, the notice to be posted as herein provided shall be posted at the Courthouse of each of such counties, and filed with the County Clerk of each of such counties where said Property is situated, and said above described and conveyed Property may be sold at the Courthouse of any one of such counties, and the notices so posted and filed shall designate the county where the Property will be sold), on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Property as an entirety or in such parcels as the Trustee acting may elect and make due conveyance to the Purchaser or Purchasers, with general warranty binding Grantors, their heirs, representatives, successors and assigns; and of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to himself, which commission shall be due and owing in addition to the attorney's fees provided for in said Note(s), and then to Beneficiary the full amount of principal, interest, attorney's fees and late charges due and unpaid on said Note(s) and all other Indebtedness, rendering the balance of the sales price, if any, to Grantors, their heirs, representatives, successors or assigns; and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Grantors, their heirs, representatives, successors and assigns.

C. Beneficiary may remedy any default, without waiving same, or may waive any default without waiving any prior or subsequent default.

D. It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or his substitute or successor, Beneficiary may at any time before the sale of said Property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said Note(s), and for the foreclosure of this Deed Of Trust lien; it is further agreed that if the Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this Deed Of Trust lien, that Beneficiary may at any time before the entry of a final judgment in said suit dismiss same and require the Trustee, his substitute or successor, to sell the Property in accordance with the provisions of this Deed Of Trust. Beneficiary shall have the right to purchase at any sale of the Property, being the highest bidder, and to have the amount for which such Property is sold credited on the debt secured hereby.

E. Beneficiary, in any event, is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place and stead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Indebtedness has been paid in full, or until said Property is sold hereunder, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee named herein.

F. In the event any sale is made of the above described Property, or any portion thereof, under the terms of this Deed Of Trust, Grantors, their heirs and assigns, shall forthwith upon making of such sale surrender and deliver possession of the Property so sold to the Purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of their failure to surrender possession of said Property upon demand, the Purchaser, his heirs, representatives, successors or assigns, shall be entitled to institute and maintain an action for forcible detainer of said Property in the Justice of the Peace Court in the Justice Precinct in which such Property, or any part thereof, is situated.

G. Grantors agree that any resale by Beneficiary of the Property described in this Deed Of Trust after foreclosure may be made for a price below the fair market value (i.e. at wholesale) and that Beneficiary is not required to re-sell the Property for a price equal to or above fair market value (i.e. retail). Grantors agree that the sales price obtained by Beneficiary at any such resale will not be used in determining the fair market value of the Property for the purposes of determining value under Section 51.003 of the Texas Property Code.

H. To the greatest extent permitted by law, Grantors hereby waive all rights and remedies created under Section 51.003 of the Texas Property Code including, without limitation, the right introduce evidence of the amount of the sales price of the Property sold by Beneficiary following any foreclosure of the liens pursuant to the terms of this Deed Of Trust.

#### Section 4.

A. It is agreed that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether vendor's, materialmen's, or mechanic's lien hereafter created on the above described Property, and in the event the proceeds of the Indebtedness as set forth herein are used to pay off and satisfy any liens heretofore existing on said Property, then Beneficiary is, and shall be, subrogated to all of the rights, liens and remedies of the holders of the Indebtedness so paid.

B. Grantors hereby transfer and assign unto Beneficiary, to be applied on the Indebtedness secured hereby: (i) all eminent domain or condemnation award moneys which may hereafter be awarded or paid for the condemnation of the hereinabove described Property, or any part thereof, or for any portion of the premises which may be appropriated for any public or quasi-public use, or by virtue of private sale in lieu thereof and any sums which may be awarded or become payable to Grantors for damages caused by public works or construction on or near the Property; (ii) all the bonuses, rents, royalties, damages and delay moneys that may be due or that may hereafter become due and payable to the Grantors or their assigns under any oil, gas, mining or mineral lease or leases of any kind now existing, or which may hereafter come into existence (including agricultural and/or hunting contracts of every kind) covering the above-described Property or any part thereof; and (iii) all proceeds from the sale of crops grown on the Property, as well as all pasturage and/or grazing or hunting fees. Grantors authorize and direct payment of such money to said Beneficiary until the debt secured hereby is paid. Such money may, at the option of the Beneficiary, be applied on the debt whether due or not. The Beneficiary shall not be obligated, in any manner to collect said moneys or any part thereof, and shall be responsible only for amounts received by the Beneficiary. Nothing herein contained shall be construed as a waiver or prejudice to the priority of this lien or the options hereunder in favor of said Beneficiary.

C. It is agreed that any extension or extensions may be made as to the time of payment of all or part of the Indebtedness secured hereby, and that any part of the above described Property may be released from this lien without altering or affecting the priority of the lien created by this Deed Of Trust in favor of any junior encumbrancer, mortgagee or purchaser, or any person acquiring an interest in the Property hereby conveyed, or any part thereof; it being the intention of the parties hereto to preserve this lien on the Property herein described and all improvements thereon, and that may be hereafter constructed thereon, first and superior to any liens that may be placed thereon, or that may be fixed, given or imposed by law thereon after the execution of this instrument, notwithstanding any such extension of the time of payment, or the release of a portion of said Property from this lien.

D. In the event any portion of the Indebtedness cannot be lawfully secured by this Deed Of Trust lien on said Property, it is agreed that the first payments made on the Indebtedness shall be applied to the discharge of that portion of the Indebtedness.

**E. Nothing contained herein or in the Note(s) or the other Loan Documents shall ever entitle Beneficiary, upon the arising of any contingency whatsoever, to receive or collect interest in excess of the highest rate allowed by the laws of the State of Texas, or to the extent Federal Law permits a greater rate, then such greater rate, on the principal Indebtedness or on any money obligation hereunder, and in no event shall Grantors be obligated to pay interest thereon in excess of such rate.**

F. If this Deed Of Trust is executed by only one person or by a corporation, the plural reference to Grantors shall be held to include the singular, and all of the covenants and agreements herein undertaken to be performed by and the rights conferred upon the respective Grantors named herein shall be binding upon and inure to the benefit of not only said parties respectively but also their respective heirs, executors, administrators, grantees, successors and assigns.

G. In the event Grantors should seek a temporary restraining order or an injunction or other legal action, be it temporary or permanent, to prevent, hinder or delay the exercise by Beneficiary of its rights and remedies under this Deed Of Trust, including, without limitation, its foreclosure rights upon the occurrence of a default as herein provided, then Grantors agree to pay and/or reimburse Beneficiary for all costs and expenses, including its reasonable and necessary attorney's fees, incurred by Beneficiary in connection with its defense, appearance and/or other action taken by Beneficiary with respect thereto, and such payment and/or reimbursement shall be made whether or not Beneficiary is the prevailing party in any such injunction or temporary restraining order or legal or arbitration proceeding. Grantors agree to contact, in writing, Dennis E. Nixon, at 1200 San Bernardo Avenue, Laredo, Texas 78042, prior to the institution of any such legal or arbitration proceedings so as to permit Beneficiary the opportunity to appear and defend itself.

H. Grantors hereby grant Beneficiary the right to protest any and all ad valorem taxes and special assessments made against the Property covered by this Deed Of Trust. In that regard, Grantors shall deliver to Beneficiary true and correct copies, when received, of all tax assessments, valuations, re-appraisals and other notices received by Grantors from all tax authorities. Beneficiary shall have the right to appear in all tax proceedings and file appeals concerning taxes affecting the Property or any portion thereof.

I. Grantors expressly represent that this Deed Of Trust and the Note(s) hereby secured are given for the following purpose(s), to-wit:

The Note secured hereby represents funds advanced to S & M Projected Assets, LLC, a Series of Assets of S & M Foreign Assets, LLC, a Texas Series Limited Liability Company, an affiliate of Grantors, to be used for working capital. Grantors acknowledge receipt of the benefit of the funds advanced to S & M Projected Assets, LLC, a Series of Assets of S & M Foreign Assets, LLC, a Texas Series Limited Liability Company.

J. To the extent allowed by law, this conveyance is also made in trust to secure and enforce the payment of any and all other indebtedness of Grantors, or any Grantor, to Beneficiary, whether presently existing or which may in any manner or means be hereafter incurred or created by Grantors and evidenced in any manner whatsoever, which other or future indebtedness Grantors acknowledge to be currently contemplated by Grantors including without limitation:

- (1) any commercial loan or indebtedness;
- (2) any credit card or other consumer type of loan;
- (3) any indebtedness relating to checking or savings accounts (overdrafts, fees, etc.);
- (4) any expenses incurred in the protection or maintenance of the collateral securing any of the liabilities, loans, and obligations described in this paragraph;
- (5) any expenses incurred in the collection of any indebtedness and/or obligation of the Grantors, or any of them, to Beneficiary whether arising out of this agreement or otherwise;
- (6) any letters of credit and/or indebtedness arising out of, or advanced to pay, letters of credit transactions;
- (7) any indebtedness, however evidenced, whether by promissory note, bookkeeping entry, electronic transfer or by any other manner or form;
- (8) any other indebtedness of Grantors, or any of them, to any financial institution affiliated with International Bancshares Corporation, jointly and/or severally, and in any capacity, whether as maker, guarantor, or otherwise, now or hereafter owing and regardless of how evidenced or arising; and
- (9) any and all extensions, modifications, substitutions and/or renewals of any of the indebtedness described in this paragraph

K. To the extent allowed by law, for purposes hereof it is intended that the Indebtedness secured hereby shall include all classes of indebtedness, whether evidenced by notes, open accounts, overdraft, or otherwise, and whether direct, indirect or contingent, regardless of class, form or purpose, and including but not limited to, loans for consumer, agricultural, business or personal purposes; provided that the indebtedness secured hereby does not include amounts owing pursuant to a homestead loan, homestead equity loan and/or home equity line of credit. The Note(s) and the other indebtedness secured by this Deed of Trust as described herein are collectively sometimes referred to herein as the "Indebtedness."

L. It is expressly agreed and understood that any and all sums now owed to or hereafter advanced by Beneficiary to Grantors shall be payable at the main offices of Beneficiary at One South Broadway, McAllen, Texas 78505, and shall bear interest as may be provided in the promissory notes or other evidences of indebtedness given by Grantors to Beneficiary; and this instrument is also executed for the purpose of securing and enforcing the payment of any renewal, extension and/or modification of any such promissory notes or other indebtedness or of any part thereof, and including any further loans and advancements made by Beneficiary to Grantors. To the extent allowed by law, repayment of all then existing Indebtedness shall not terminate this Deed Of Trust unless the same be so released by Beneficiary at the request of Grantors, but otherwise it shall remain in full force and effect to secure all future advances and Indebtedness, regardless of any additional security that may be taken as to any past or future Indebtedness, and shall be unaffected by any renewals, extensions or partial releases hereunder.

M. GRANTORS WILL NEITHER CREATE NOR PERMIT ANY JUNIOR OR SUBSEQUENT LIEN OR ENCUMBRANCE AGAINST THE PROPERTY OR THE COLLATERAL WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY.

#### Section 5.

A. Applicable to Prior Liens. If this Deed Of Trust is or becomes subordinate to any other liens, security interests, assignments of leases or rents or any other encumbrances (collectively, the "Prior Liens") affecting any portion of the Property, all documents creating the Prior Liens and evidencing and governing the indebtedness secured thereby shall be collectively called the "Prior Lien Documents," and this paragraph shall apply. Grantors shall not enter into any renewal, extension, modification, increase or refinancing of any of the Prior Lien Documents or the indebtedness secured thereby without prior written consent of Beneficiary. Grantors shall pay when due all indebtedness evidenced and secured by the Prior Lien Documents and shall timely perform all other obligations of the Grantors under the Prior Lien Documents. Beneficiary may, but shall not be obligated to, pay any such indebtedness or perform any such obligations for the account of Grantors and any sum so expended shall be secured hereby. Grantors shall pay to Beneficiary on demand all amounts so expended by Beneficiary with interest on such amounts from the date and at the rate set forth in the Note, but not in excess of the highest rate permitted by applicable law. Beneficiary's cure of any default under any of the Prior Lien Documents shall not constitute a cure of the default under this Deed Of Trust. Grantors shall send to Beneficiary a copy of each notice of default or notice of acceleration or other notice received by Grantors from the holder of any of the Prior Lien Documents within one (1) business day after receipt thereof by Grantors. Notwithstanding the foregoing, Beneficiary does not consent to any Prior Lien unless otherwise expressly permitted in this Deed Of Trust.

B. Security Agreement/Financing Statement. This Deed Of Trust lien shall cover all property now or hereafter affixed or attached or incorporated into the Property now or hereafter owned by Grantors in which Grantors now or hereafter have an interest which, to the fullest extent permitted by law, shall be deemed fixtures and part of the Property. In addition, this Deed Of Trust lien shall cover, and Grantors, to the extent of any present or hereafter created rights of Grantors in such Property, hereby grant to Beneficiary to secure the repayment of the Indebtedness, a security interest in the following described personal property (the "Collateral"): (i) all building materials, fixtures, equipment and other personal property to be incorporated into any improvements constructed on the Property; (ii) all goods, materials, supplies, fixtures, equipment,



machinery, furniture and furnishings and other personal property which are now or may hereafter be appropriated for use on (whether such items are stored on the Property or elsewhere), located on or used in connection with the Property; (iii) all rents, issues and profits, proceeds, profits, renewals, income or other benefit derived from the payments received for lodging from interests and/or materials, and all inventory, accounts, accounts receivable, contract rights, general intangibles, causes of action, choses in action, intellectual property, chattel paper, instruments, documents, permits, plans, specifications, drawings, governmental approvals, notes, drafts, letters of credit, indebtedness arising from and/or to pay an advance on letters of credit, accounts due from credit, debit and/or charge card companies, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted on the Property by Grantors; and (iv) all replacements and substitutions for or additions to, all products and proceeds of, and all books, records and files relating to any of the foregoing. This Deed Of Trust lien constitutes a security agreement and is intended to create a security interest in the Collateral in favor of Beneficiary to secure the repayment of the Indebtedness in accordance with the provisions of the Texas Business and Commerce Code (the "Code"). This Deed Of Trust shall be self-operative with respect to the Collateral, and upon the occurrence of an Event of Default Grantors expressly grant to Beneficiary the right to enter upon the property where the Collateral is located for the purpose of enforcing its rights to the Collateral, and Grantors agree to execute and deliver, on demand, such security agreements and other instruments as Beneficiary may request in order to impose the lien hereof made more specifically upon any of the Collateral. If the lien of this Deed Of Trust on any property shall be subject to any prior security agreement covering the Collateral, then upon the occurrence of an Event of Default, all the rights, title and interest of Grantors in and to any and all deposits made in connection with the transaction whereby such prior security agreement was made are hereby presently assigned to Beneficiary, together with the benefit of any payments now or hereafter made in connection with such transaction.

C. Financing Statements. In addition to Beneficiary's other rights set forth in this Deed Of Trust, Beneficiary shall have all rights of a secured party under the Code with respect to the Collateral. Beneficiary is authorized to file any and all financing statements, amendments thereto and continuations thereof that may be required by Beneficiary in its sole discretion to establish and maintain the validity and priority of Beneficiary's security interest in the Collateral, and Grantors shall bear all costs thereof and of any and all lien searches and Secretary of State reports required by Beneficiary in connection with the Collateral. If Beneficiary should dispose of any of the property covered by the security interest created under this Deed Of Trust pursuant to the Code, ten (10) days prior written notice by Beneficiary to Grantors shall be deemed to be reasonable notice of such disposition; provided however, Beneficiary may at its option dispose of such property in accordance with the foreclosure procedures of this Deed Of Trust in lieu of proceeding under the Code as provided in the Texas Property Code. Grantors further authorize Beneficiary to file any financing statements, amendments thereto and continuations thereof that may be required by Beneficiary in its sole discretion describing any agricultural liens or other statutory liens held by Beneficiary.

D. Beneficiary may sell, lease, or otherwise dispose of any of the Collateral in accordance with the rights, remedies, and duties of a Secured Party under Articles 2 and 9 of the Code after giving notice as required by those articles; unless the Collateral threatens to decline rapidly in value, is perishable, or would typically be sold on a recognized market, Beneficiary will give Grantors reasonable notice of any public sale of the Collateral or of a time after which it may be otherwise disposed of without further notice to Grantors; in this event, notice will be deemed reasonable if it is mailed, postage prepaid, to Grantors at the address for Grantors set forth on page 1 hereof at least ten days before any public sale or ten days before the time when the Collateral may be otherwise disposed of without further notice to Grantors. Grantors authorize Beneficiary to disclaim or modify any and all warranties set forth in Section 9.610(d) of the Code (or any successor statute) and stipulate and agree that such a disclaimer and/or modification will not render the sale commercially unreasonable. Beneficiary may retain all or part of the Collateral in full and/or partial satisfaction of the Indebtedness pursuant to Section 9.620 of the Code (or any successor statute).

#### Section 6.

A. Grantors agree that they will not, without the prior written consent of Beneficiary, until the Indebtedness secured hereby is paid in full: in one transaction or a series of related transactions, merge into or consolidate with any other entity, sell all or substantially all of its assets, or in any way jeopardize its existence as a corporation or other business entity; change the state of its incorporation, organization or registration; change its name; change the address and/or location of its Chief Executive Office (as defined in the Code); or file any instrument attempting to amend or terminate a Financing Statement, including without limitation a UCC-3 amendment or termination form.

B. Grantors shall give advance notice in writing to Beneficiary of any proposed change in Grantors' name, identity, organizational structure, or principal place of business, and Beneficiary is authorized, prior to or concurrently with the occurrence of any such change, to file any and 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 of the property described or referred to herein.

C. Grantors expressly represent that the Property hereinabove mentioned and conveyed to the Trustee forms no part of any property owned, used or claimed by Grantors as exempted from forced sale under the laws of the State of Texas as either personal or business homestead, and Grantors renounce all and every claim thereto under any such law or laws and hereby expressly designate as their homestead, personal and business, and as constituting all the property owned, used or claimed by them as exempt either as personal and/or business under such laws the following described property:

\_\_\_\_\_, \_\_\_\_\_ County, Texas  
(Personal and Business Homestead)

#### Section 7.

A. (1) Assignments of Rents, Profits, etc. All of the rents, royalties, bonuses, issues, contracts for deed, proceeds, profits, revenue, income and any other benefit derived from the Property and improvements thereto, or arising from the use or enjoyment of any portion of the Property or from any lease or agreement pertaining thereto and liquidated and other

damages payable by any tenant upon default under any such leases, and all proceeds payable under any policy or policies of insurance covering loss of rents or caused by damage to any part of the Property, together with any and all rights that Grantors may have against any tenant under such leases or any subtenants or occupants of any part of the Property (collectively hereinafter called the "Rents"), are hereby assigned to Beneficiary as security for the repayment of the Indebtedness. Grantors shall apply all Rents collected by Grantors first to the payment of the Indebtedness in such manner as Beneficiary elects and thereafter to the account of Grantors. All such Rents shall be deposited in deposit accounts maintained at the offices of Beneficiary. Nothing in this Deed Of Trust shall be deemed to constitute a waiver or modification of any rights or remedies of Beneficiary under Chapter 64, Subtitle B, Title 5 of the Texas Property Code, as amended (the "Assignment of Rents Statute"). Upon the occurrence of an Event of Default, Beneficiary may enforce the assignment of the Rents set out in this paragraph pursuant to the provisions of the Assignment of Rents Statute or any other applicable law, at the option of Beneficiary.

(2) Assignment of Leases. Grantors hereby assign to Beneficiary all existing and future leases, including subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof, upon any part of the Property (the "Leases"). Grantors hereby further assign to Beneficiary all guaranties of tenants' performance under the Leases. Prior to an Event of Default, Grantors shall have the right, without joinder of Beneficiary, to enforce the Leases, unless Beneficiary directs otherwise.

(3) Warranties Concerning Leases and Rents. Grantors represent and warrant that: (a) Grantors have good title to the Leases and Rents hereby assigned and authority to assign them, and no other person or entity has any right, title or interest therein; (b) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder; (c) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged; (d) no Rents have been or will be anticipated, waived, released, discounted, set-off or compromised; and (e) Grantors have not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents.

(4) Grantor's Covenants of Performance as to Leases. Grantors covenant to: (a) perform all of their obligations under the Leases and give prompt notice to Beneficiary of any failure to do so; (b) give immediate notice to Beneficiary of any notice Grantors received from any tenant or subtenant under any of the Leases specifying any claimed default by any party under such Leases, excluding, however, notice of defaults under residential leases; (c) enforce the tenant's obligations under the Leases; (d) defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party; and (e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed Of Trust and any other encumbrances permitted by this Deed Of Trust.

(5) Prior Approval for Action Affecting Leases. Grantors shall not, without the prior written consent of Beneficiary, (a) receive or collect Rents more than one month in advance, (b) encumber or assign future Rents, (c) waive or release any obligations of any tenant under the Leases, (d) cancel, terminate or modify any of the Leases, (e) cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder, or (f) permit any assignment of the Leases whereby a tenant is released from its obligations thereunder.

B. Rejection of Leases in Bankruptcy. Grantors agree that no settlement for damages for termination of any of the Leases under the United States Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Beneficiary, and any check in payment of such damages shall be made payable to both Grantors and Beneficiary. Grantors hereby assign any such payment to Beneficiary, to be applied to the Indebtedness as Beneficiary may elect, and Grantors agree to endorse any check for such payment to the order of Beneficiary.

C. Beneficiary's Rights. Beneficiary's acceptance of this assignment shall not, prior to, upon, or after entry upon and taking possession of the Property by Beneficiary or any foreclosure of the lien hereunder or conveyance of the Property herein described in lieu thereof, be deemed to constitute Beneficiary as a "mortgagee in possession", nor obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses or perform any obligation or liability under the Leases, or assume any obligation or liability under the Leases, or assume any obligation in regard to any security deposits held by any party pursuant to the Leases. Beneficiary shall not, by virtue of its acceptance of this assignment of the Rents and the Leases or entry upon the Property as aforesaid, be liable for any injury or damage to any person or property in or about the Property. Beneficiary shall not be obligated to perform, satisfy, or otherwise adhere to any terms of any of the Leases or any covenant of Grantors to any tenant unless Beneficiary agrees to do so in writing, which shall be in Beneficiary's sole and absolute discretion.

D. Appointment of Attorney-In-Fact. Grantors hereby appoint Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any of the Leases to this Deed Of Trust.

E. Indemnification. Beneficiary shall not be obligated to perform or discharge, nor does Beneficiary hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or by reason of the assignment of the Rents and/or Leases to Beneficiary hereunder. Grantors hereby agree to indemnify, defend and hold Beneficiary harmless from all liability, loss, cost, damage, or expense incurred by Beneficiary from any claims under the Leases or under or by reason of the assignment of the Rents and/or Leases to Beneficiary hereunder, including, without limitation, the management, operation and maintenance of the Property by Beneficiary, and of and from any and all claims and demands whatsoever which may be asserted against it 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. Should Beneficiary incur any liability, loss or damage under the Leases or under or by reason of the assignment of the Rents and/or Leases to Beneficiary hereunder, or in the defense of any such claims or demands, the amount thereof, including costs and expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorney's fees, shall bear interest at the maximum lawful rate and shall be payable by Grantors immediately upon demand by Beneficiary and shall be

secured hereby.

F. Records, etc. Upon request by Beneficiary, Grantors shall deliver to Beneficiary executed originals of all Leases and copies of all records relating thereto. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Mortgaged Property without the prior written consent of Beneficiary.

G. Notices to Tenants. Grantors hereby irrevocably authorize and direct each of the tenants under the Leases to pay Rents directly to Beneficiary at all times from and after receipt by any tenant of written notice in compliance with the Assignment of Rents Statute from Beneficiary that an Event of Default has occurred, without necessity of further consent of Grantors. The tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute payment to Grantors under the Leases.

#### Section 8.

Fixtures. In the event there are items on the Property that are goods that are or are to become fixtures related to said Property, it is intended that, as to those goods, this Deed Of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing of record in the real estate records of the county in which the 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 set forth on the first page of this Deed Of Trust. The mailing address of the Grantors, as Debtor, is as set forth below.

#### Section 9.

A. Environmental Compliance. Grantors' use of the Property will at all times comply with all laws, statutes, ordinances, rules and regulations ("Laws") of any governmental, quasi-governmental or regulatory authority which relate to the transportation, storage, placement, handling, treatment, discharge, generation, production, removal or disposal (collectively, "Treatment") of any waste, petroleum product (including, without limitation, gasoline and diesel fuel), waste products, poly-chlorinated biphenyl, asbestos, hazardous materials, and/or any other substance, the Treatment of which is regulated by any Laws (collectively, "Waste"). Grantors will comply with all Laws regarding underground storage tanks used to hold gasoline, diesel fuel, or any other petroleum products on the Property.

B. To the best of Grantors' knowledge, no Waste is now located on the Property, and neither Grantors nor, to the best of Grantors' knowledge, any other person has ever caused or permitted any Treatment of any Waste on, under or at the Property or any part thereof, and, to the best of Grantors' knowledge, no property adjoining the Property is being used, or has ever been used at any previous time, for the Treatment of Waste.

C. To the best of Grantors' knowledge, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Waste or the Treatment of Waste is proposed, threatened, anticipated or in existence with respect to the Property. The Property is not currently listed on, and to Grantors' knowledge, after diligent investigation and inquiry, has never been listed on, any federal or state "Superfund" or "Superlien" list.

D. Grantors agree to (a) give notice to Beneficiary immediately upon Grantors acquiring knowledge of any Waste on the Property with a full description thereof; (b) promptly comply with any Laws applicable to Grantors or the Property requiring the removal, treatment or disposal of such Waste and provide Beneficiary with satisfactory evidence with such compliance; and (c) provide Beneficiary within thirty (30) days after demand by Beneficiary with a bond, letter of credit or similar financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Waste and to discharge any assessments that may be established or imposed on the Property as a result thereof.

E. Any environmental spill, discharge or other event upon or adjacent to the Property which Beneficiary determines materially and adversely affects the value and/or use of the Property shall constitute an Event of Default under this Deed Of Trust and shall further constitute an event of default under the Note(s) and under all other Indebtedness secured hereby.

F. Grantors agree to perform an asbestos survey and obtain any necessary permits, and to provide a copy of said survey and permits to Beneficiary, prior to commencing any renovation and/or demolition of a public or commercial building. Grantors further agree to comply with all other Laws regarding asbestos and asbestos removal.

G. Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of any Event Of Default, may contract for the services of any person or firm ("Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purposes of determining whether there exists on the Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any Laws relating to Waste or the Treatment of Waste. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantors which do not impede the performance of the Site Assessments. Grantors agree that any Site Assessment shall be for the sole and exclusive use, benefit and reliance of Beneficiary in assessing the value of its security interest in the Property and will not be relied on by Grantors for any purpose. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform above and below ground testing for environmental damage or the presence of Waste 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. Grantors 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 be available for meetings with Site Reviewers if requested. The cost of performing such Site Assessments shall be paid by Grantors upon demand of Beneficiary and any such expenses borne by Beneficiary not immediately reimbursed by Grantors shall be part of the Indebtedness secured by this Deed Of Trust.

**H. Indemnification.** Whether or not any Site Assessments are conducted, and regardless of whether or not an Event Of Default occurs, and regardless of whether any remedies in respect of the Property are exercised by Beneficiary, Grantors will defend, indemnify and hold Beneficiary and Trustee harmless from and against any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, attorneys fees and expenses, and remedial costs), suit costs of any settlement or judgment, and claims of any and every kind whatsoever, (a) which may now or in the future (whether before or after the release or foreclosure of this Deed Of Trust) be paid, incurred or suffered by Beneficiary or asserted against Beneficiary or Trustee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, (i) the presence of any Waste on or under the Property, or (ii) the escape, seepage, leakage, spillage, discharge, emission or release of any Waste from, on or affecting the Property, or (b) which arise out of or result from the environmental condition of the Property or the applicability of any Laws relating to Waste (including, without limitation, **the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., as amended from time to time, or any federal, state or local so-called "Superfund" or "Superlien" law, statute, law, ordinance, code, rule, regulation, order or decree**), regardless of whether or not caused by or within the control of Grantors, Beneficiary or Trustee. The representations, covenants, warranties and indemnification herein contained with regard to Waste and the Treatment thereof shall survive the release and/or judicial or non-judicial foreclosure (or transfer in lieu thereof) of the lien of this Deed Of Trust. For the purpose of this paragraph and notwithstanding any other provision contained herein to the contrary, the term "Grantors" shall refer not only to the Grantors named herein, but also to all other persons who may hereafter assume the Note(s) and the obligations of Grantors under this Deed Of Trust.

Section 10.

**BINDING ARBITRATION AGREEMENT  
PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

**GRANTORS, BENEFICIARY AND TRUSTEE AGREE TO ARBITRATION AS FOLLOWS (hereinafter referred to as the "Arbitration Provisions"):**

**I. Special Provisions and Definitions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:**

- (a) **Informal Resolution of Customer Concerns.** Most customer concerns can be resolved quickly and to the customer's satisfaction by contacting your account officer, branch manager or by calling the Customer Service Department in your region. The region and numbers are:

1.	Laredo	956-722-7611
2.	Austin	512-397-4506
3.	Brownsville	956-547-1000
4.	Commerce Bank	956-724-1616
5.	Corpus Christi	361-888-4000
6.	Eagle Pass	830-773-2313
7.	Houston	713-526-1211
8.	McAllen	956-686-0263
9.	Oklahoma	405-841-2100
10.	Port Lavaca	361-552-9771
11.	San Antonio	210-518-2500
12.	Zapata	956-765-8361

In the unlikely event that your account officer, branch manager or the customer service department is unable to resolve a complaint to your satisfaction or if the Beneficiary has not been able to resolve a dispute it has with you after attempting to do so informally, you and the Beneficiary agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.

- (b) **Sending Notice of Dispute.** If either you or the Beneficiary intend to seek arbitration, then you or the Beneficiary must first send to the other by certified mail, return receipt requested, a written Notice of Dispute. The Notice of Dispute to the Beneficiary should be addressed to: Dennis E. Nixon, President, at International Bancshares Corporation, P.O. Drawer 1359, Laredo, Texas 78042-1359 or if by email, [ibcchairman@ibc.com](mailto:ibcchairman@ibc.com). The Notice of Dispute must (a) describe the nature and basis of the claim or dispute; and (b) explain specifically what relief is sought. You may download a copy of the Notice of Dispute at [www.ibc.com](http://www.ibc.com) or you may obtain a copy from your account officer or branch manager.
- (c) **If the Dispute is not Informally Resolved.** If you and the Beneficiary do not reach an agreement to resolve the claim or dispute within thirty (30) days after the Notice of Dispute is received, you or the Beneficiary may commence a binding arbitration proceeding. During the binding arbitration proceeding, any settlement offers made by you or the Beneficiary shall not be disclosed to the Arbitrator.
- (d) **"DISPUTE(S)".** As used herein, the word "DISPUTE(S)" includes any and all controversies or claims between the **PARTIES** of whatever type or manner, including without limitation, any and all claims arising out of or relating to this Deed Of Trust, compliance with applicable laws and/or regulations, any and all services or products provided by the Beneficiary, any and all past, present and/or future loans, lines of credit, letters of credit, credit facilities or other form of indebtedness and/or agreements involving the **PARTIES**, any and all transactions between or involving the **PARTIES**, and/or any and all aspects of any past or present relationship of the **PARTIES**, whether banking or otherwise, specifically including but not limited to any claim founded in contract, tort, fraud, fraudulent inducement, misrepresentation or otherwise, whether based on statute, regulation, common law or equity.
- (e) **"CONSUMER DISPUTE"** and **"BUSINESS DISPUTE"**. As used herein, **"CONSUMER DISPUTE"** means a **DISPUTE** relating to an account (including a deposit account), agreement, extension of credit,

loan, service or product provided by the Beneficiary that is primarily for personal, family or household purposes. "BUSINESS DISPUTE" means any DISPUTE that is not a CONSUMER DISPUTE.

- (f) **"PARTIES" or "PARTY"**. As used in these Arbitration Provisions, the term "PARTIES" or "PARTY" means Grantors, Beneficiary, Trustee and each and all persons and entities signing this Deed Of Trust or any other agreements between or among any of the PARTIES as part of this transaction. "PARTIES" or "PARTY" shall be broadly construed and include individuals, beneficiaries, partners, limited partners, limited liability members, shareholders, subsidiaries, parent companies, affiliates, officers, directors, employees, heirs, agents and/or representatives of any party to such documents, any other person or entity claiming by or through one of the foregoing and/or any person or beneficiary who receives products or services from the Beneficiary and shall include any other owner and holder of this Deed Of Trust. Throughout these Arbitration Provisions, the terms "you" and "your" refer to Grantors, and the term "Arbitrator" refers to the individual arbitrator or panel of arbitrators, as the case may be, before which the DISPUTE is arbitrated.
- (g) **BINDING ARBITRATION**. The PARTIES agree that any DISPUTE between the PARTIES shall be resolved by mandatory binding arbitration pursuant to these Arbitration Provisions at the election of either PARTY. **BY AGREEING TO RESOLVE A DISPUTE IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO A JURY TRIAL OR TO LITIGATE IN COURT** (except for matters that may be taken to small claims court for a CONSUMER DISPUTE as provided below).
- (h) **CLASS ACTION WAIVER**. The PARTIES agree that (i) no arbitration proceeding hereunder whether a CONSUMER DISPUTE or a BUSINESS DISPUTE shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. **THE PARTIES AGREE TO ARBITRATE A CONSUMER DISPUTE OR BUSINESS DISPUTE ON AN INDIVIDUAL BASIS AND EACH WAIVES THE RIGHT TO PARTICIPATE IN A CLASS ACTION.**
- (i) **FEDERAL ARBITRATION ACT AND TEXAS LAW**. The PARTIES acknowledge that this Deed Of Trust evidences a transaction involving interstate commerce. The Federal Arbitration Act shall govern (i) the interpretation and enforcement of these Arbitration Provisions, and (ii) all arbitration proceedings that take place pursuant to these Arbitration Provisions. **THE PARTIES AGREE THAT TEXAS SUBSTANTIVE LAW WILL APPLY IN ANY BINDING ARBITRATION PROCEEDING OR SMALL CLAIMS COURT ACTION REGARDLESS OF WHO INITIATES THE PROCEEDING, WHERE YOU RESIDE OR WHERE THE DISPUTE AROSE, UNLESS EXPRESSLY PROHIBITED BY LAW.**

## II. Provisions applicable only to a CONSUMER DISPUTE:

- (a) Any and all CONSUMER DISPUTES shall be resolved by arbitration administered by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and the Supplemental Procedures for Resolution of Consumer Disputes and Consumer Due Process Protocol (which are incorporated herein for all purposes). It is intended by the PARTIES that these Arbitration Provisions meet and include all fairness standards and principles of the American Arbitration Association's Consumer Due Process Protocol and due process in predispute arbitration. If a CONSUMER DISPUTE is for a claim of actual damages above \$250,000 it shall be administered by the AAA before three neutral arbitrators at the request of any PARTY.
- (b) Instead of proceeding in arbitration, any PARTY hereto may pursue its claim in your local small claims court, if the CONSUMER DISPUTE meets the small claims court's jurisdictional limits. If the small claims court option is chosen, the PARTY pursuing the claim must contact the small claims court directly. **The PARTIES agree that the class action waiver provision also applies to any CONSUMER DISPUTE brought in small claims court.**
- (c) For any claim for actual damages that does not exceed \$2,500, the Beneficiary will pay all arbitration fees and costs provided you submitted a Notice of Dispute with regard to the CONSUMER DISPUTE prior to initiation of arbitration. For any claim for actual damages that does not exceed \$5,000, the Beneficiary also agrees to pay your reasonable attorney's fees and reasonable expenses your attorney charges you in connection with the arbitration (even if the Arbitrator does not award those to you) plus an additional \$2,500 if you obtain a favorable arbitration award for your actual damages which is greater than any written settlement offer for your actual damages made by the Beneficiary to you prior to the selection of the Arbitrator.
- (d) Under the AAA's Supplemental Procedures for Consumer Disputes, if your claim for actual damages does not exceed \$10,000, you shall only be responsible for paying up to a maximum of \$125 in arbitration fees and costs. If your claim for actual damages exceeds \$10,000 but does not exceed \$75,000, you shall only be responsible for paying up to a maximum of \$375 in arbitration fees and costs. For any claim for actual damages that does not exceed \$75,000, the Beneficiary will pay all other arbitrator's fees and costs imposed by the administrator of the arbitration. With regard to a CONSUMER DISPUTE for a claim of actual damages that exceeds \$75,000, or if the claim is a non-monetary claim, the Beneficiary agrees to pay all arbitration fees and costs you would otherwise be responsible for that exceed \$1,000. The fees and costs stated above are subject to any amendments to the fee and cost schedules of the AAA. The fee and cost schedule in effect at the time you submit your claim shall apply. The AAA rules also permit you to request a waiver or deferral of the administrative fees and costs of arbitration if paying them would cause you financial hardship.

- (e) Although under some laws, the Beneficiary may have a right to an award of attorney's fees and expenses if it prevails in arbitration, the Beneficiary agrees that it will not seek such an award in a binding arbitration proceeding with regard to a **CONSUMER DISPUTE** for a claim of actual damages that does not exceed \$75,000.
- (f) To request information on how to submit an arbitration claim, or to request a copy of the AAA rules or fee schedule, you may contact the AAA at 1-800-778-7879 (toll free) or at [www.adr.org](http://www.adr.org).

### III. Provisions applicable only to a **BUSINESS DISPUTE**:

- (a) Any and all **BUSINESS DISPUTES** between the **PARTIES** shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the AAA in effect at the time of filing, as modified by, and subject to, these Arbitration Provisions. A **BUSINESS DISPUTE** for a claim of actual damages that exceeds \$250,000 shall be administered by AAA before at least three (3) neutral arbitrators at the request of any **PARTY**. In the event the aggregate of all affirmative claims asserted exceeds \$500,000, exclusive of interest and attorney's fees, or upon the written request of any **PARTY**, the arbitration shall be conducted under the AAA Procedures for Large, Complex Commercial Disputes. If the payment of arbitration fees and costs will cause you extreme financial hardship you may request that AAA defer or reduce the administrative fees or request the Beneficiary to cover some of the arbitration fees and costs that would be your responsibility.
- (b) The **PARTIES** shall have the right to (i) invoke self-help remedies (such as setoff, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration, and/or (ii) request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after the commencement of any arbitration proceeding (individually, and not on behalf of a class). The **PARTIES** need not await the outcome of the arbitration proceeding before using self-help remedies. Use of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either **PARTY'S** right to compel arbitration. Any ancillary or provisional judicial remedy which would be available from a court at law shall be available from the Arbitrator. The **PARTIES** agree that the AAA Optional Rules for Emergency Measures of Protection shall apply in an arbitration proceeding where emergency interim relief is requested.
- (c) Except to the extent the recovery of any type or types of damages or penalties may not be waived under applicable law, the Arbitrator shall not have the authority to award either **PARTY** (i) punitive, exemplary, special or indirect damages, (ii) statutory multiple damages, or (iii) penalties, statutory or otherwise.
- (d) The Arbitrator may award attorney's fees and costs including the fees, costs and expenses of arbitration and of the Arbitrator as the Arbitrator deems appropriate to the prevailing **PARTY**. The Arbitrator shall retain jurisdiction over questions of attorney's fees for fourteen (14) days after entry of the decision.

### IV. General provisions applicable to both **CONSUMER DISPUTES** and **BUSINESS DISPUTES**:

- (a) The Arbitrator is bound by the terms of these Arbitration Provisions. The Arbitrator shall have exclusive authority to resolve any **DISPUTES** relating to the scope or enforceability of these Arbitration Provisions, including (i) all arbitrability questions, and (ii) any claim that all or a part of these Arbitration Provisions are void or voidable (including any claims that they are unconscionable in whole or in part).
- (b) **These Arbitration Provisions shall survive any termination, amendment, or expiration of this Deed Of Trust, unless all of the PARTIES otherwise expressly agree in writing.**
- (c) If a **PARTY** initiates legal proceedings, the failure of the initiating **PARTY** to request arbitration pursuant to these Arbitration Provisions within 180 days after the filing of the lawsuit shall be deemed a waiver of the initiating **PARTY'S** right to compel arbitration with respect to the claims asserted in the litigation. The failure of the defending **PARTY** in such litigation to request arbitration pursuant to these Arbitration Provisions within 180 days after the defending **PARTY'S** receipt of service of judicial process, shall be deemed a waiver of the right of the defending **PARTY** to compel arbitration with respect to the claims asserted in the litigation. If a counterclaim, cross-claim or third party action is filed and properly served on a **PARTY** in connection with such litigation, the failure of such **PARTY** to request arbitration pursuant to these Arbitration Provisions within ninety (90) days after such **PARTY'S** receipt of service of the counterclaim, cross-claim or third party claim shall be deemed a waiver of such **PARTY'S** right to compel arbitration with respect to the claims asserted therein. The issue of waiver pursuant to these Arbitration Provisions is an arbitrable dispute. Active participation in any pending litigation described above by a **PARTY** shall not in any event be deemed a waiver of such **PARTY'S** right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.
- (d) Any **PARTY** seeking to arbitrate shall serve a written notice of intent to any and all opposing **PARTIES** after a **DISPUTE** has arisen. The **PARTIES** agree a timely written notice of intent to arbitrate by either **PARTY** pursuant to these Arbitration Provisions shall stay and/or abate any and all action in a trial court, save and except a hearing on a motion to compel arbitration and/or the entry of an order compelling arbitration and staying and/or abating the litigation pending the filing of the final award of the Arbitrator.
- (e) Any Arbitrator selected shall be knowledgeable in the subject matter of the **DISPUTE** and be licensed to

practice law.

- (f) For a one (1) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrator from the AAA neutral list, such that at least one arbitrator remains after the **PARTIES** exercise all of their respective strikes. For a three (3) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrators from the AAA neutral list, such that at least three arbitrators remain after the **PARTIES** exercise all of their respective strikes. After exercising all of their allotted respective strikes, the **PARTIES** shall rank those potential arbitrators remaining numerically in order of preference (with "1" designating the most preferred). The AAA shall review the **PARTIES** rankings and assign a score to each potential arbitrator by adding together the ranking given to such potential arbitrator by each **PARTY**. The arbitrator(s) with the lowest score total(s) will be selected. In the event of a tie or ties for lowest score total and if the selection of both or all of such potential arbitrators is not possible due to the required panel size, the AAA shall select the arbitrator(s) it believes to be best qualified.
- (g) The **PARTIES** and the Arbitrator shall treat all aspects of the arbitration proceedings, including, without limitation, any documents exchanged, testimony and other evidence, briefs and the award, as strictly confidential; provided, however, that a written award or order from the Arbitrator may be filed with any court having jurisdiction to confirm and/or enforce such award or order.
- (h) Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under these Arbitration Provisions, and the commencement of any arbitration proceeding tolls such statute of limitations.
- (i) If the AAA is unable for any reason to provide arbitration services, then the **PARTIES** agree to select another arbitration service provider that has the ability to arbitrate the **DISPUTE** pursuant to and consistent with these Arbitration Provisions. If the **PARTIES** are unable to agree on another arbitration service provider, any **PARTY** may petition a court of competent jurisdiction to appoint an Arbitrator to administer the arbitration proceeding pursuant to and consistent with these Arbitration Provisions.
- (j) The award of the Arbitrator shall be final and Judgment upon any such award may be entered in any court of competent jurisdiction. The arbitration award shall be in the form of a written reasoned decision and shall be based on and consistent with applicable law.
- (k) Unless the **PARTIES** mutually agree to hold the binding arbitration proceeding elsewhere, venue of any arbitration proceeding under these Arbitration Provisions shall be in the county and state where Beneficiary is located, which is Beneficiary's address set out in Section 1.A. hereof.
- (l) If any of these Arbitration Provisions are held to be invalid or unenforceable, the remaining provisions shall be enforced without regard to the invalid or unenforceable term or provision.

**JURY WAIVER: IF A DISPUTE BETWEEN YOU AND BENEFICIARY OR TRUSTEE PROCEEDS IN COURT RATHER THAN THROUGH MANDATORY BINDING ARBITRATION, THEN YOU AND BENEFICIARY AND TRUSTEE EACH WAIVE THE RIGHT TO A JURY TRIAL, AND SUCH DISPUTE WILL BE TRIED BEFORE A JUDGE ONLY.**

#### Section 11.

A. Notwithstanding the provision above relating to conducting a foreclosure sale(s) pursuant to the provisions of this Deed Of Trust, the Trustee shall, and is hereby directed to, comply with the provisions of Chapter 51 of the Texas Property Code as it may be amended and in effect as of the date or dates of any foreclosure proceedings conducted pursuant to this Deed Of Trust. Without limiting the generality of the foregoing, the location and time of sale shall be held in accordance with Section 51.002 of the Texas Property Code or successor statute.

B. This Section 11.B shall apply in the event an arbitrator or court of competent jurisdiction determines that the waiver by Grantors set out in Section 3.H above is unenforceable. Grantors stipulate and agree that for purposes of determining the fair market value of the Property (or any portion thereof), as such term is used in Section 51.003 of the Texas Property Code, which is sold at a non-judicial foreclosure sale pursuant to the terms of this Deed Of Trust (and in accordance with Section 51.002 of the Texas Property Code), the following factors shall be used to determine such Property's fair market value, for such purposes: (a) the Property shall be valued "AS IS" without any value being anticipated for any improvements or refurbishing to be conducted, or constructed, after the date of the foreclosure sale, (b) the intention of the purchaser to re-sell the Property promptly, without any extensive holding period, (c) any re-sale shall be for cash only, without financing by the seller, (d) all reasonable costs of closing a re-sale shall be deducted from the estimate of fair market value, such as attorneys' fees, title policy premiums, surveyor fees and expenses, the then prevailing broker's or salesman commission, and unpaid ad valorem tax amounts, and (e) the application of a discount to the value to be applied to any future sales price to arrive at its then current fair market value. Grantors further stipulate that any value given to such Property in connection with Grantors' obtaining of the Loan or at any other time or times, shall not be used and shall not be considered for guidance in determining the fair market value of such Property on the date of any such foreclosure sale.

C. Leasehold Covenants. If the interest of Grantors in the Property is a leasehold interest and not a fee ownership interest, then the lien of this Deed Of Trust shall be upon the leasehold rights and benefits of Grantors, but, in no event shall any of the burdens or obligations under said leasehold be assumed by, or be the obligations of, Beneficiary, absent an express written instrument executed by Beneficiary assuming such obligations, which shall be within the sole discretion of Beneficiary.

D. To the extent Grantors own a leasehold interest in all or any portion of the Property, Grantors hereby covenant and agree as follows:

(a) Grantors will at all times fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it, as tenant or lessee, under any and all leases affecting the Property (collectively, the "Lease"), true and correct copies of which Grantors shall deliver to Beneficiary, and that if Grantors shall fail to do so, Beneficiary may (but shall not be obligated to) take any action Beneficiary deems necessary or desirable to prevent or to cure any default by Grantors in the performance of or compliance with any of Grantor's covenants or obligations under the Lease. Upon receipt by Beneficiary from the landlord under the Lease of any written notice of default by Grantors thereunder, regardless of whether any default or any written notice of default, or the nature thereof, be questioned or denied by Grantors or by any party on behalf of Grantors, Grantors hereby expressly grant to Beneficiary and agree that Beneficiary shall have the absolute and immediate right to enter in and upon the leased premises or any part thereof that Beneficiary deems necessary or desirable with or without notice in order to prevent or to cure any default by Grantors under the Lease and take any other action that Beneficiary deems necessary or prudent in its sole discretion. Beneficiary may pay and expend such sums of money as Beneficiary in its sole discretion deems necessary for any such purpose, Beneficiary will be fully subrogated to the rights of the landlord under the Lease, and Grantors hereby agree to pay to Beneficiary, immediately upon demand, all such sums so paid and expended by Beneficiary. All sums so paid and expended by Beneficiary shall accrue interest at the prematurity rate of interest set forth in the Note and be added to and be secured by the lien of this Deed Of Trust.

(b) Grantors will not surrender the leasehold estate and interest hereinabove described, nor terminate or cancel the Lease; and Grantors will not, without the express written consent of Beneficiary, modify, change, supplement, alter or amend the Lease either orally or in writing. Any such termination, cancellation, modification, change, supplementation, alteration or amendment of the Lease without the prior written consent thereto by Beneficiary shall be void and of no force and effect. As further security to Beneficiary, Grantors shall deposit with Beneficiary an original of the Lease and all amendments thereto or a certified copy thereof, to be retained by Beneficiary until the Indebtedness secured hereby is fully paid.

(c) No release or forbearance of any of Grantors' obligations under the Lease, pursuant to the Lease or otherwise, shall release Grantors from any of its obligations under this Deed Of Trust, including obligations with respect to the payment of rent as provided for in the Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Lease to be kept, performed and complied with by Grantors therein.

(d) Unless Beneficiary shall otherwise expressly consent in writing, the fee title to the property demised by the Lease and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the landlord or in the tenant, or in a third party by purchase or otherwise.

(e) If there shall be filed by or against Grantors a petition under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and Grantors, as lessee under the Lease, shall determine to reject the Lease pursuant to Section 365(a) of the Bankruptcy Code, Grantors shall give Beneficiary not less than thirty (30) days prior notice of the date on which Grantors shall apply to the Bankruptcy Court for authority to reject the Lease. Beneficiary shall have the right, but not the obligation, to serve upon Grantors within such thirty (30) day period a notice stating that (i) Beneficiary demands that Grantors assume and assign the Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code, and (ii) Beneficiary covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Lease. If Beneficiary serves upon Grantors the notice described in the preceding sentence, Grantors shall not seek to reject the Lease, and Grantors shall comply with the demand provided for in the clause (i) of the preceding sentence within thirty (30) days after such notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (ii) of the preceding sentence. Further, effective upon the entry of an order for relief in respect of Grantors under Chapter 7 of the Bankruptcy Code, Grantors hereby assign and transfer to Beneficiary a non-exclusive right to apply to the Bankruptcy Court under Subsection 365(d)(1) of the Bankruptcy Code for an order extending the period during which the Lease may be rejected or assumed.

**Section 12. Swap Transactions** As used in the paragraph, the term "Lender" means Beneficiary. Without limiting the generality of any other provisions of this Deed Of Trust, Grantors and Lender agree that the following obligations of Grantors are secured by this Deed Of Trust and constitute "Indebtedness", as that term is used in this Deed Of Trust: (i) any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of the Grantors to Lender or any Lender Affiliate (as hereinafter defined) arising under or in connection with any Swap Transaction, and (ii) any Swap Related Loss (as defined in the Note) that becomes due and payable in accordance with the terms of the Note. The term "Swap Transaction", as used herein, means (i) any transaction evidenced by one or more agreements now existing or hereafter entered into between Grantors and Lender and/or any financial institution affiliated with International BancShares Corporation (a "Lender Affiliate") which is a rate swap, swap option, interest rate option or other financial instrument or interest (including an option with respect to any such transaction), (ii) any type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and which is a forward swap, future, option or other derivative on one or more rates, or any combination of the foregoing transactions, or (iii) any transaction that is similar to any transaction referred to in clause (i) or (ii) above except that it is between Lender or a Lender Affiliate and any party or entity other than Grantors and it is entered into by Lender or such Lender Affiliate on account of a corresponding Swap Transaction that is described in clause (i) or (ii) above. The occurrence or existence of any default, event of default or other similar condition or event (however described) on the part of Grantors arising under or with respect to any Swap Transaction shall constitute an Event of Default under this Deed Of Trust.



Section 13.

NO ORAL AGREEMENTS

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Dated this 26th day of October, 2016.

GRANTOR(S):

S&P Foreign Assets South Padre Island LLC  
A Texas Limited Liability Company

By: \_\_\_\_\_  
Name: Sergio Ramon Arguelles Gutierrez  
Title: Sole Manager

Address: 200 Tesoro Ave  
Rancho Viejo, Texas 78575

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Texas  
COUNTY OF Hidalgo

This instrument was acknowledged before me on the 28<sup>th</sup> day of October, 2016 by Sergio Ramon Arguelles Gutierrez, Sole Manager of S&P Foreign Assets South Padre Island LLC, a Texas Limited Liability Company, on behalf of said company.

[Signature]  
\_\_\_\_\_  
Notary Public, State of

Texas

My Commission Expires: 2-23-19

Commission No. \_\_\_\_\_



After recording, return to Beneficiary, at its mailing address, as follows:

International Bank of Commerce  
One South Broadway  
McAllen, Texas 78505