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Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
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SECOND DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS SECOND DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS ("Deed of Trust") made this 30th day of January, 2004, by and among BOCA DEVELOPMENT, LLC, a Nebraska limited liability company, whose mailing address is 105 South 9th Street, Omaha, Nebraska 68102, as Trustor; BRYAN S. MICK, a member of the Nebraska State Bar Association, whose mailing address is 2120 South 72nd Street, Suite #1250, Omaha, Nebraska 68124, as Trustee; and SEATON INVESTMENTS, LLLP, a Colorado limited liability limited partnership, whose mailing address is 5102 Pasadena Way, Broomfield, Colorado 80020, as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers and assigns to Trustee, in trust with power of sale, the real estate located in the City of Omaha, Douglas County, Nebraska, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Real Estate"), together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to:

- (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired;
- (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");
- (c) all machinery, appliances, apparatus, equipment, inventory and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements thereof;
- (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by Trustor or in which Trustor now has or hereafter acquires an interest;

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(e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder;

(f) all building materials and supplies now or hereafter placed on the Real Estate or on or in the Improvements;

(g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor.

The property so conveyed hereunder is hereinafter referred to as the "Trust Property".

FOR THE PURPOSE OF SECURING THE FOLLOWING (the "Obligations"):

A. Payment of the principal sum of Two Million and 00/100ths Dollars (\$2,000,000), or so much thereof as has or will be advanced under the terms of that certain Promissory Note dated of even date herewith, delivered by Trustor to Beneficiary (hereinafter referred to as the "Promissory Note").

B. Payment of late charges and other sums due under the terms of the Promissory Note.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor incorporated by reference or contained herein, or contained in the Promissory Note.

D. Payment of future advances to be made at the option of Beneficiary to Trustor, provided, however, that the aggregate secured principal future advances, not including sums advanced to protect the Trust Property, shall never exceed the original stated principal sum of the Promissory Note.

E. Payment of all sums advanced by Beneficiary that Beneficiary deems desirable or necessary to protect the Trust Property as provided for herein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. **Title.** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Trust Property in fee simple, subject only to the "Permitted Exceptions" shown on Exhibit "B" attached hereto and by this reference incorporated herein, and will forever warrant and defend the title thereto against the claims and demands of all persons whomsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a second lien upon the Trust Property, subject only to a first Deed of Trust executed by Trustor in favor of Omaha State Bank, a Nebraska banking corporation (the "First Deed of Trust") securing a \$9,500,000.00 promissory note (the "First Mortgage Note") executed in connection therewith. If an Event of Default occurs under the First Deed of Trust (as defined therein), or a default occurs under the First Mortgage Note, such a default or Event of Default shall constitute an Event of Default hereunder, in addition to and not in derogation of any of the Events of Default described in Paragraph 7 below.

2. **Maintenance.**

(a) To keep the Trust Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed thereon, and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; not to remove, demolish or materially alter any Improvement, or the character or use thereof, at any time thereon unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon the Trust Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the Trust Property may be reasonably necessary to protect and preserve the same, the specific enumerations herein not excluding the general.

3. **Fire and Casualty Insurance.**

(a) To keep the Trust Property insured against loss or damage by fire with extended coverage, vandalism and malicious mischief endorsement, and against such other risks or hazards which, in the reasonable opinion of Beneficiary, should be insured against (including, during any period of construction, builder's risk completed value nonreporting form insurance), to the amount of the full insurable value thereof on a replacement cost basis with a company or companies and in such form and with such endorsements as may be approved or required by Beneficiary. Proceeds under all such insurance shall be payable to Trustor and Beneficiary, as their interests may appear, and all such insurance policies shall be endorsed with a standard, noncontributory mortgagee's clause in favor of Beneficiary. Trustor shall also carry public liability insurance in such form and amount and with such companies as Beneficiary may, from time to time, require, which shall include a provision to protect Beneficiary against any liability incident to the use of or resulting from any incident occurring in or about the Trust Property. Initially, such public liability insurance shall provide for comprehensive general liability coverage with limits of not less than \$2,000,000.00 combined single limit per occurrence for personal injury, death and property damage. However, such amount shall be increased from time to time as Beneficiary may hereafter require. Said policies or copies thereof, at Beneficiary's request, shall be delivered to, and remain in possession of, Beneficiary as further security for the

faithful performance of the Obligations, which delivery shall constitute an assignment by Trustor to Beneficiary of all rights thereunder, including all return premiums. At least thirty (30) days before expiration, Trustor shall deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing paid premiums. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and may make payment of premiums thereon, which payment is reimbursable on demand. Neither Trustee nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the Loan. In no event, and whether or not an Event of Default (as hereinafter defined) has occurred hereunder, shall Beneficiary, by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor. Trustor shall give immediate written notice of any loss to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. Said policies shall require that thirty (30) days' prior written notice of cancellation or modification be given to Beneficiary.

(b) In case of any loss, the amount collected under any policy of insurance on the Trust Property may, at the option of Beneficiary, be applied by Beneficiary to satisfaction of any Obligations and in such order and amount as Beneficiary may determine; or said amount, or any portion thereof may, at the option of Beneficiary, either be used in replacing or restoring the Trust Property to a condition satisfactory to Beneficiary, or said amount or any portion thereof may be released to Trustor. In any such event neither Trustee nor Beneficiary shall be obligated to see to the proper application thereof; nor shall the amount so released or used be deemed a payment on any Obligation. Such application, use, and/or release shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale or judicial foreclosure sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

4. Taxes and Other Sums Due. To pay, satisfy and discharge, at least ten (10) days before delinquency, any and all of the following sums:

- (a) all general and special taxes and assessments and public charges affecting or levied against the Trust Property;
- (b) all encumbrances, charges and liens, with interest, on the Trust Property, or any part thereof, which are, or appear to Beneficiary to be, prior to or superior hereto;
- (c) all costs, fees and expenses of this trust, whether or not described herein;

(d) fees or charges for any statement regarding any Obligation in any amount demanded by Beneficiary, not to exceed the maximum amount allowed by law therefor at the time when such request is made; and

(e) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor.

Should Trustor fail to make any such payment, Beneficiary, without consenting to the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his or her reasonable fees.

5. **Sums Advanced to Bear Interest.** To pay immediately upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be considered a portion of the Obligations and bear interest from the date advanced or paid at the same rate specified in the Promissory Note and shall be secured by this Deed of Trust.

6. **Assignment of Deposits.** That as further additional security, Trustor hereby transfers and assigns to Beneficiary during continuance of this Deed of Trust, all right, title and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor.

7. **Events of Default.** Upon the occurrence of any one of the following (hereinafter an "Event of Default" or "default"), the payment of all principal, interest and any other sums due under the terms of the Promissory Note shall, at the option of Beneficiary, be accelerated and such principal, interest and other sums shall immediately be due and payable without notice or demand, and Beneficiary shall have the option to foreclose judicially, or nonjudicially through power of sale, any and all liens securing the payment thereof:

(a) Default in the payment of principal of, or interest on, the Promissory Note when due or in the payment of any other sums secured hereby when due; or

(b) Failure by Trustor to punctually perform or observe any covenant or agreement contained in this Deed of Trust (other than the monetary obligations described in paragraph (a) above) and such failure shall not have been cured within twenty (20) days after written notice from Beneficiary of such default; or

(c) Trustor shall:

(i) have an order for relief entered with respect to it under any law relating to bankruptcy, insolvency, reorganization or relief of debtors ("Bankruptcy Law");

- (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due;
 - (iii) make an assignment for the benefit of its creditors;
 - (iv) apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any of its property;
 - (v) institute any proceedings seeking an order for relief under any Bankruptcy Law, or a proceeding seeking to adjudicate it a bankrupt or insolvent or seeking a dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it, or its debts, under any Bankruptcy Law; or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it;
 - (vi) take any action to authorize or effect any of the foregoing actions set forth in this paragraph (c); or
 - (vii) fail to contest, in good faith, any appointment or proceeding described in paragraph (d) below; or
- (d) Without the application, approval or consent of Trustor, a receiver, custodian, trustee, examiner, liquidator or similar official shall be appointed for Trustor, or any of its property, or any proceeding described in subparagraph (c)(v) shall be instituted against Trustor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) consecutive days; or
- (e) Trustor shall fail, within thirty (30) days, to pay bond or otherwise discharge any judgment or order for the payment of money in excess of \$1,000.00, which is not stayed on appeal or otherwise appropriately contested in good faith; or
- (f) Should it be discovered after the execution and delivery of this Deed of Trust that there is a defect in the title to, or a lien or encumbrance of any nature on the Real Estate other than the lien created in favor of first Nebraska Bank under the First Deed of Trust, and not disclosed in the policy of title insurance issued to the Beneficiary insuring the priority of this Deed of Trust covering the Real Estate (subject only to the lien of the First Deed of Trust), unless such defect is cured within thirty (30) days after written notice of such defect from Beneficiary to Trustor; or
- (g) Should Trustor be divested of title to the Real Estate, or any part thereof, or any interest therein, either voluntarily or involuntarily; or
- (h) If title to the Trust Property be subjected to any lien or charge, whether superior or inferior to the lien of this Deed of Trust, voluntarily or involuntarily,

contractual or statutory, except as permitted by the First Deed of Trust, without the prior written consent of Beneficiary in each such instance first had and obtained, and if any such lien or charge is not released of record within thirty (30) days following written notice to Trustor; or

(i) If the Trust Property is at any time owned by a corporation or limited liability company and the transfer of more than twenty percent (20%) of its voting stock or partnership interests, as the case may be, occurs, either voluntarily or involuntarily, without the prior written consent of Beneficiary; or

(j) If the Trust Property is at any time owned by a general or limited partnership and the transfer of a general partnership interest in the partnership occurs, either voluntarily or involuntarily, without the prior written consent of Beneficiary; or

(k) If the Trust Property is at any time owned by a trust and the transfer of any beneficial interest in the trust occurs, either voluntarily or involuntarily, without the prior written consent of Beneficiary.

8. Compliance With Laws. Trustor shall comply promptly and fully with all present and future laws, ordinances, rules and regulations of any governmental authority having jurisdiction of or over the Trust Property or any part or use thereof, including, without limitation, laws, ordinances, rules or regulations relating to asbestos, petroleum products, or hazardous or toxic wastes or materials.

IT IS MUTUALLY AGREED THAT:

9. Litigation. Trustor shall defend this Deed of Trust and the priority lien created hereby in any action or proceeding purporting to affect the Trust Property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Trust Property, and either Trustee or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding; and Trustee or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein as either may be advised and may settle, compromise or pay the same or any other claims and, in their behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on written demand shall pay all actual and reasonable costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise, and irrespective of whether the interest of Beneficiary or Trustee in the Trust Property is directly questioned by such action, including but not limited to any action for the condemnation or partition of the Trust Property.

10. Sale of Premises. In order to induce Beneficiary to make the Loan, Trustor covenants and agrees to and with Beneficiary that if the Trust Property or any part thereof or beneficial interest therein is sold, assigned, transferred, conveyed, encumbered, hypothecated, mortgaged or otherwise alienated by Trustor, whether voluntarily, involuntarily or by operation of law, in either or any case without the prior written consent of Beneficiary, Beneficiary, at its option, may declare the indebtedness evidenced by the Promissory Note and all other Obligations to be immediately due and payable, and Beneficiary may invoke any remedies following such acceleration as are permitted by this Deed of Trust or at law or in equity; provided, however, that Lender consents to the encumbrance upon the Trust Property created by the First Deed of Trust.

11. Casualty and Condemnation. All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgment, settlement or otherwise:

- (a) for injury or damage to the Trust Property;
- (b) in connection with any condemnation for public use or injury to the Trust Property or any part thereof;

are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary.

Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may require.

All amounts received by Beneficiary pursuant to this Deed of Trust, in connection with any condemnation for public use of, or injury to, the Trust Property, may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness secured hereby or other Obligation, and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of Beneficiary, be used in replacing or restoring the Trust Property to a condition satisfactory to Beneficiary, or be released to Trustor to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any Event of Default, or notice of default hereunder, or invalidate any act done pursuant to such notice.

12. Judicial Foreclosure or Trustee's Sale on Default.

(a) Upon the occurrence of one or more Events of Default, or default by Trustor in the performance of any other covenant or agreement hereunder or under any instrument or document now or hereafter executed by Trustor to further secure payment and performance of the Obligations, Beneficiary may declare all indebtedness secured hereby immediately due and payable and, at the option of Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property or may be sold in the manner provided in the Nebraska Trust Deeds Act, Neb. Rev. Stat. § 76-1001, et seq. (Reissue 1996) under the power of sale conferred upon the Trustee hereunder.

(b) If the Trust Property is sold pursuant to the power of sale conferred upon Trustee hereunder, Trustee shall cause to be filed of record a written notice of default and election to sell

the Trust Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Trust Property or any portion thereof, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine, at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Trust Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying any Trust Property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, second, to the payment of any Obligations, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

(c) Trustor agrees, for itself and any and all persons or concerns claiming by, through or under Trustor, that if one or more of Trustor or any such persons or concerns shall hold possession of the Trust Property, or any part thereof, subsequent to the Trustee's or judicial sale hereunder, it, or the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at either such sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for the reasonable rental of the Real Estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

13. Personal Property. This Deed of Trust is also intended to create, and Trustor does hereby grant to Beneficiary, a security interest in any and all of the Trust Property which is personal property owned by Trustor and is now or hereafter located on or used in connection with the Trust Property including, but not limited to, all equipment, fixtures, furniture, appliances and articles of personal property owned by Trustor and now or hereafter located on, attached to or used in and about the Improvements which are necessary to the complete and comfortable use and occupancy of the Improvements for all purposes for which they are intended and such other goods and chattels and personal property owned by Trustor to be used or furnished in operating the Improvements, or the activities conducted therein, and all renewals or replacements thereof or substitutions therefor, whether or not the same shall be attached to the Improvements in any manner, and all building materials and equipment now or hereafter situated on, in or about the Real Estate or the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing items which are leased by Trustor. Trustor shall, from time to time, upon written request of Beneficiary, provide Beneficiary with a current inventory of all of the personal property in which the Beneficiary is granted a security interest hereunder, in such detail as Beneficiary may require.

14. Security Agreement. This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party

under the Nebraska Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers, such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of the Trust Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold in one or more public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of the Real Estate by Trustee, as provided for in this Deed of Trust, and Beneficiary shall further have all rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an attorney, employee or other agent of Beneficiary or Trustee. Expenses of retaking, holding, preparing for sale, and selling such personal property shall be born by Trustor and shall include Beneficiary's and Trustee's fees and actual and reasonable legal expenses. Beneficiary shall have the right to enter upon the Real Estate and the Improvements or any other real property where any personal property which is the subject of the security interest granted herein is located, to take possession of, assemble and collect such personal property or to render it unusable, or Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at a place deemed reasonably convenient to Beneficiary. If notice is required by law, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of the Trust Property or of the time of or after which any private sale or other intended disposition is to be made, and, if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Deed of Trust upon giving the same notice with respect to the sale of the personal property as is required with respect to the Trustee's sale under this Deed of Trust.

15. Fixture Financing Statement. This Deed of Trust is intended to be a financing statement within the purview of the Nebraska Uniform Commercial Code with respect to those items of the Trust Property that constitute fixtures on the Real Estate. The address of Trustor (Debtor) and Beneficiary (Secured Party) are set forth on the first page of this Deed of Trust. This Deed of Trust is to be filed for record in the office of the Register of Deeds of Douglas County, Nebraska, where the Real Estate is located. Trustor is the record owner of the Real Estate.

16. Substitution of Trustee. Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Register of Deeds of Sarpy County, Nebraska, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, power and duties.

17. **No Waiver by Beneficiary.** No waiver by Beneficiary of any right under this Deed of Trust shall be effective unless in writing. Waiver by Beneficiary of any right granted to Beneficiary under this Deed of Trust or of any provision of this Deed of Trust as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment or performance of any Obligation after its due date, or by making any other payment or performing any other act on behalf of Trustor for which Trustor was obligated hereunder, but failed to make or perform, or by adding any payment made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right to require prompt payment when due of, or to require prompt performance of, any Obligation, or to declare a default for failure so to pay or perform.

18. **Time of the Essence.** Time is of the essence for all Trustor's obligations hereunder.

19. **Illegality.** In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

20. **General Provisions.**

(a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

(b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of the Promissory Note, whether or not named as Beneficiary herein.

(c) Wherever the context so requires, the masculine gender includes the feminine and neutral, the singular number includes the plural, and vice versa.

(d) Captions and section headings used herein are for convenience only, are not a part of this Deed of Trust, and shall not be used in construing it.

(e) The term "Trustor" shall mean the original Trustor hereunder and any subsequent owner of the Trust Property who acquires the same subject to this Deed of Trust with the consent of Beneficiary. If more than one person is now or hereafter named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person.

(f) The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

21. **Trustee's Acceptance.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

22. **Address for Mailing Notices.** Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder shall be mailed to each person below at the address indicated:

If to Trustor: c/o Andrew Seaton, Manager
105 South 9th Street
Omaha, Nebraska 68102

If to Trustee: Bryan S. Mick, Esq.
Crocker, Huck Law Firm
2120 South 72nd Street, Suite 1250
Omaha, Nebraska 68124

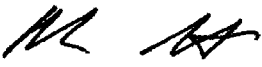
If to Beneficiary: c/o Andrew K. Seaton, General Partner
5102 Pasadena Way
Broomfield, CO 80020

23. **Nebraska Law.** This Deed of Trust, the rights of Beneficiary hereunder and the Promissory Note shall be construed and enforced according to the laws of the State of Nebraska.

IN WITNESS WHEREOF, this instrument was executed on the date first set forth above.

TRUSTOR:


BOCA DEVELOPMENT, LLC, a
Nebraska limited liability company

By: 

Andrew K. Seaton, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of January, 2004 by Andrew K. Seaton, Manager of Boca Development, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



Notary Public

My Commission expires:



EXHIBIT "A"

Legal Description

Lots 1,2,3 and 4, Block E, Original City of Omaha in Douglas County, Nebraska

OM-53956-1

EXHIBIT "B"

Permitted Exceptions

1. Deed of Trust in favor of Omaha State Bank, securing a \$9,500,000.00 principal amount promissory note.

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