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GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE



WATER LINE EASEMENT AGREEMENT

THIS WATER LINE EASEMENT AGREEMENT is executed this 14th day of May, 1996, by and between Rodney Kush and Kathleen Kush, husband and wife ("Kush"), and Blue One Limited Partnership, a Nebraska limited partnership ("Blue One").

RECITALS:

A. Kush is the owner of a parcel of land more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein ("Kush Parcel").

B. Blue One is the owner of a parcel of land more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein ("Blue One Parcel"):

C. Kush wishes to grant and Blue One wishes to receive an underground waterline easement under and across the south twenty-eight (28) feet in width of the Kush Parcel (the "Easement Premises").

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants are made:

1. Grant of Easement. Kush hereby grants to Blue One, as an easement appurtenant to the Blue One Parcel, a perpetual, nonexclusive, underground waterline easement under and across the Easement Premises.

2. Scope of Water Line Easement. The water line easement shall only be used by Blue One to construct, lay, install, operate, inspect, maintain, repair, replace and/or remove, from time to time, subject to the provisions of this easement grant, the following:

a. An underground water line, the entire portion of which shall be located at least 42 inches beneath the surface of the Easement Premises.

b. In no event shall any apparatus be located upon the surface of the Easement Premises without Blue One first obtaining the prior written consent of Kush, which consent

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may be withheld by Kush in their sole and absolute discretion. Notwithstanding the above, there shall be permitted within the Easement Premises immediately adjacent to 72nd Street, a surface level cover which will permit access to the underground shut-off valves.

c. At the request of Kush, Blue One shall mark on the surface of the Easement Premises the exact location of Blue One's actual or anticipated underground facilities.

3. Reservation of Rights to Use Easement Premises. Kush retains the right to use:

a. the surface of the Easement Premises; and

b. to the extent that use is not incompatible with Blue One's use thereof, the sub-surface area of the Easement Premises in such manner as Kush shall deem proper. Kush specifically reserves the right to allow other utility lines to be installed under, across and within the Easement Premises, provided those utility lines do not materially interfere with the use of the Easement Premises by Blue One.

4. Relocation of Water Line Easement. Blue One agrees that it will, from time to time, upon request of Kush, allow the relocation of the Easement Premises upon the following terms and conditions:

a. Such relocation is of such a nature to permit the use and operation of Blue One's facilities at the same level of service as existed before the date of the relocation;

b. Blue One and Kush shall have executed and recorded in the Office of the Register of Deeds of Douglas County, Nebraska, an agreement that terminates or modifies this water line easement and contains the grant of a modified or new easement from Kush to Blue One for the relocated easement using an agreement that is in form and substance substantially similar to this Easement Grant; and

c. Kush has agreed to pay the costs for the relocation of the water line easement.

5. Running of Benefits and Burdens. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon, and inure to the benefit of the heirs, assigns and successors of the parties hereto.

6. Construction. The rule of strict construction does not apply to this Easement Grant. This Easement Grant shall be given a reasonable construction so that the intention of the parties to a commercially usable right of enjoyment on the part of Kush is carried out.

7. Eminent Domain. In the event that any part of the Easement Premises shall be taken by eminent domain or any other similar legal authorization, so much of the award as represents payment therefore shall be paid to the owner of the burdened property and no portion of the award shall be claimed by the owner of the benefitted property.

8. Mortgages Subordinate. Any mortgage now or hereafter placed upon the Easement Premises shall, at all times, be subject and subordinate to the terms of this Easement Grant and any party foreclosing any such mortgage shall acquire title to the foreclosed premises subject to the terms of this Easement Grant.

9. Term; Non-exclusive. The easement herein granted and established shall be perpetual and non-exclusive.

10. Waiver. No delay or omission on the part of any party hereto in the exercise of any right accruing on any default of any other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at anytime during the continuance of such default. A waiver by any party of a breach or a default in the observance or performance of any of the terms or conditions of this Easement Grant by any other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Easement Grant. No breach, whether or not material, of any of the obligations imposed upon any party hereunder shall entitle any other party to cancel, rescind or otherwise terminate this Easement Grant, but such limitation shall not affect, in any other manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Easement Grant.

11. Non-merger. Ownership by one person or party of both the Kush Parcel and the Blue One Parcel shall not result in a cancellation or termination of the easements hereby created through merger or otherwise, unless specifically terminated in writing by an instrument duly executed, acknowledged and recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

12. Miscellaneous.

- a. If any provision or portion of this Easement Grant, or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Easement Grant or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby; the remainder of this Easement Grant shall be given effect as if such invalid or inoperative portion had not been included; and shall not be deemed that any such invalid provision

affects the consideration for this Easement Grant; and the provisions of this Easement Grant shall be valid and enforceable to the full extent permitted by law.

- b. This Easement Grant shall be construed and governed in accordance with the laws of the State of Nebraska.
- c. The paragraph headings in this Easement Grant are for convenience only, shall in no way define or limit the scope or content of this Easement Grant, and shall not be considered in any construction or interpretation of this Easement Grant, or any part thereof.

IN WITNESS WHEREOF, the said parties have executed this Water Line Easement Agreement on the day and year first written above.

“BLUE ONE”

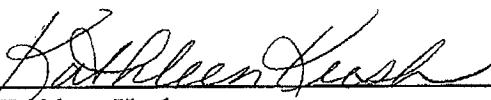
BLUE ONE LIMITED PARTNERSHIP,
a Nebraska limited partnership

By: Werner Investments, Inc., a Nebraska corporation
Its General Partner

By: 
Clarence L. Werner, President

“KUSH”

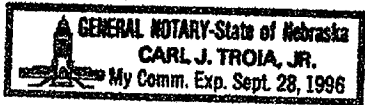

Rodney Kush


Kathleen Kush

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 14th day of May, 1996, before me, the undersigned, a Notary Public, in and for said county and state personally appeared Rodney Kush, to me, known to be the identical person whose name is affixed to the above Water Line Easement Agreement and acknowledged the same thereof to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.





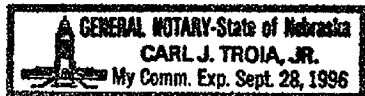
Notary Public

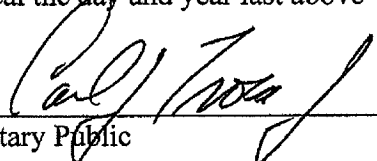
NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 14th day of May, 1996, before me, the undersigned, a Notary Public, in and for said county and state personally appeared Kathleen Kush, to me, known to be the identical person whose name is affixed to the above Water Line Easement Agreement and acknowledged the same thereof to be her voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.





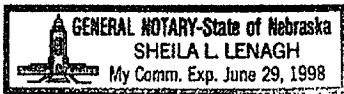
Notary Public

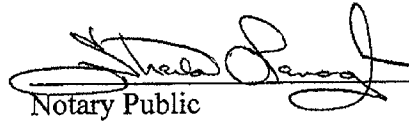
NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF NEBRASKA)
 SARPY) ss.
COUNTY OF ~~DOUGLAS~~)

On this 3rd day of May, 1996, before me, the undersigned, a Notary Public, in and for said county and state personally appeared Clarence L. Werner, President of Werner Investments, Inc., to me, known to be the identical person whose name is affixed to the above Water Line Easement Agreement and acknowledged the same thereof to be his voluntary act and deed and the voluntary act and deed of the corporation.

Witness my hand and Notarial Seal the day and year last above written.




Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

CONSENT OF MORTGAGEE

Mid City Bank is the beneficiary under that certain Deed of Trust covering the Kush Parcel given by Rodney Kush and Kathleen Kush, as Trustors, to Thomas J. Young, as Trustee for the benefit of Mid City Bank, as Beneficiary, dated October 20, 1994, , recorded October 21, 1994, in Book 4427, page 621 of the Mortgage Records of Douglas County, Nebraska ("Deed of Trust"). Mid City does hereby consent to the terms of the attached Water Line Easement Agreement and hereby subordinates the Deed of Trust to the provisions of the attached Water Line Easement Agreement.

Dated this 17th day of May, 1996.

MID CITY BANK

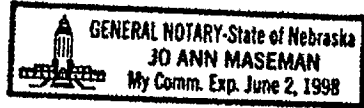
By: James G. Fittl, Pres.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 17 day of May, 1996, before me, the undersigned, a Notary Public, in and for said county and state personally appeared JAMES G. FITTL, the PRESIDENT of Mid City Bank, before me, known to be the identical person whose name is affixed to the above Water Line Easement Agreement and acknowledged the same thereof to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

Jo Ann Maseman
Notary Public



NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

EXHIBIT "A"

Tract "A" of an administratively approved subdivision as surveyed, platted and recorded in Misc. Book 969 at Page 188, lying within the West ½ of the SW ¼ of Section 1, T14N, R12E of the 6th P.M., Douglas County, Nebraska

EXHIBIT "B"

Part of Tract "B" of an administratively approved subdivision as surveyed, platted and recorded in Misc. Book 969 at Page 188, lying within the West 1/2 of the SW 1/4 of Section 1, T14N, R12E of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: Commencing at the SW corner of said Tract "B" said point being on the north right of way line of the Big Papillion Creek and on the east right of way line of 72nd Street; thence N00°37'37" W (assumed bearing) 58.59 feet on the west line of said Tract "B"; thence N06°51'12" W 23.64 feet on the west line of said Tract "B" to the point of beginning said point being the NW corner of a portion of said Tract "B" condemned by the Papio Missouri River Natural Resources District and hereinafter called NRD Tract; thence continuing N06°51'12" W 137.45 feet on the west line of said Tract "B" to the SW corner of Tract "A" of said administratively approved subdivision; thence N89°22'23" E 644.37 feet on the south line of said Tract "A" to the SE corner thereof; thence N00°33'25" W 565.00 feet on the east line of said Tract "A" to the NE corner thereof; thence S89°22'23" W 558.00 feet on the north line of said Tract "A" to the NW corner thereof; thence S10°32'17" W 178.64 feet on the westerly line of said Tract "A"; thence S89°22'23" W 55.00 feet on the westerly line of said Tract "A"; thence N00°37'37" W 15.82 feet on the westerly line of said Tract "B"; thence S89°22'23" W 10.00 feet on the westerly line of said Tract "B"; thence N00°37'37" W 337.78 feet on the westerly line of said Tract "B"; thence N11°23'04" E 33.64 feet on the westerly line of said Tract "B"; thence N21°48'15" E 182.91 feet on the westerly line of said Tract "B" to the NW corner thereof; thence N89°50'03" E 337.86 feet on the northerly line of said Tract "B"; N87°35'30" E 255.54 feet on the northerly line of said Tract "B"; thence S00°33'25" E 311.01 feet on the northerly line of said Tract "B"; thence N89°50'03" E 600.01 feet on the northerly line of said Tract "B" to the NE corner thereof; thence S00°33'25" E 1073.87 feet on the east line of said Tract "B" and on the east line of the west 1/2 of the SW 1/4 of said Section 1 to the NE corner of said NRD Tract; thence N76°55'33" W 1277.27 feet on the north line of said NRD Tract to the point of beginning.

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 SW }

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