

98-24977

FILED SARPY CO. NE.

INSTRUMENT NUMBER
98 024977

98 SEP -3 PM 2: 52

REGISTER OF DEEDS

Counter S
Verify JK
D.E. DJ
Proof ja
Fee \$ 85.50
Ck Cash Chg

State of Nebraska Space Above This Line For Recording Data

CL 33075
85.50

DEED OF TRUST

(With Future Advance Clause)

Construction Security Agreement

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is August 19, 1998 and the parties, their addresses and tax identification numbers, if required, are as follows:

TRUSTOR: **BALLENA LIMITED PARTNERSHIP**
11850 Nichols St. #230
Omaha, NE 68154
Taxpayer I.D. #: 47-0730152

If checked, refer to the attached Addendum incorporated herein, for additional Trustees, their signatures and acknowledgments.

TRUSTEE: **Mid City Bank Corporation**
352 N. 114th ST
Omaha, NE 68154
Taxpayer I.D. #: 47-0486424

BENEFICIARY: **MID CITY BANK**
Organized and existing under the laws of the state of Nebraska
352 N 114TH STREET
OMAHA, NE 68154
Taxpayer I.D. #: 47-0486424

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Beneficiary, with power of sale, the following described property: LOTS 2 THROUGH 7 INCLUSIVE, 10, 13 THROUGH 15 INCLUSIVE, 38 THROUGH 41 INCLUSIVE, 44 THROUGH 80 INCLUSIVE, 82 THROUGH 94 INCLUSIVE, 96 THROUGH 99 INCLUSIVE, 118 THROUGH 120 INCLUSIVE, 123 THROUGH 127 INCLUSIVE, AND 130 THROUGH 184 INCLUSIVE, ALL IN BALLENA, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED, IN SARPY COUNTY, NEBRASKA.

The property is located in Sarpy at _____
(County)
BALLENA, A SUBDIVISION _____, Nebraska _____
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 152,040.50. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Beneficiary's security and to perform any of the covenants contained in this Security Instrument.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)
NOTE DATED 08-19-98 TO BALLENA LIMITED PARTNERSHIP IN THE AMOUNT OF \$152,040.50

mid city bank
352 N. 114th Street
Omaha, Ne. 68154



[Signature] (page 1 of 4)

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Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Beneficiary's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Beneficiary, Trustor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Beneficiary to the extent of the Secured Debt immediately before the acquisition.

- 20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Trustor will not be required to pay to Beneficiary funds for taxes and insurance in escrow.
- 21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Trustor will provide to Beneficiary upon request, any financial statement or information Beneficiary may deem reasonably necessary. Trustor agrees to sign, deliver, and file any additional documents or certifications that Beneficiary may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Beneficiary's lien status on the Property.
- 22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Trustor signs this Security Instrument but does not sign an evidence of debt, Trustor does so only to mortgage Trustor's interest in the Property to secure payment of the Secured Debt and Trustor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Beneficiary and Trustor, Trustor agrees to waive any rights that may prevent Beneficiary from bringing any action or claim against Trustor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Trustor agrees that Beneficiary and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Trustor's consent. Such a change will not release Trustor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Trustor and Beneficial.
- 23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Beneficiary is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
- 24. **SUCCESSOR TRUSTEE.** Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
- 25. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one trustor will be deemed to be notice to all trustors.
- 26. **WAIVERS.** Except to the extent prohibited by law, Trustor waives all appraisal and homestead exemption rights relating to the Property.
- 27. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Trustor grants to Beneficiary a security interest in all goods that Grantor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- Riders.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
 - Condominium Rider Planned Unit Development Rider Other
- Additional Terms.**

SIGNATURES: By signing below, Trustor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Trustor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

X. *Eric B. Waddington* (Signature) **BALLENA LIMITED PARTNERSHIP** (Date)
Eric B. Waddington (Signature) **Eric B. Waddington, Partner** (Date)
 Eric B. Waddington, President

ACKNOWLEDGMENT:
 STATE OF Nebraska COUNTY OF SARPY) ss.
 (Individual) This instrument was acknowledged before me this 19th day of August, 1998
 by BALLENA LIMITED PARTNERSHIP By Eric B. Waddington, President of Drella II Inc.,
 and partner
 My commission expires: 2-5-99

