

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2002-13344

2002 APR 11 A 10:18 AM

*Gregory D. Dowling*  
REGISTER OF DEEDS

NEBRASKA DOCUMENTARY  
STAMP TAX  
APR 11 2002  
\$ 133.22

Counter DW  
Verify DW  
D.E. DW  
Proof DW  
Fee \$ 133.22  
CK  Cash  Chg  MON

WARRANTY DEED CITY OR COUNTY-CORPORATION (page 1)  
PROJECT: STPN-77(37) C.N.: 21860 TRACT: 2

KNOW ALL MEN BY THESE PRESENTS:

THAT *Miller East Investments* 10900 *Henry Anderson Brewery, Le Vite, NE*

organized and existing under and by virtue of the laws of the State of  
~~Nebraska~~ hereinafter known as the Grantor, for and in  
consideration of the sum of **THIRTEEN THOUSAND THREE HUNDRED AND  
NO/100---(\$13,300.00)--- DOLLARS** in hand paid, does hereby grant, bargain, sell,  
convey and confirm unto SARPY COUNTY, NEBRASKA the following  
described real property situated in Sarpy County, and State of Nebraska,  
to-wit;

A part of Lot 41, Brook Valley Business Park, Lots 34 thru 46,  
inclusive & Outlot A, a subdivision located in the SE 1/4 of Section  
17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County,  
Nebraska, more particularly described as follows:

Commencing at the Southeast corner of said SE1/4 of Section 17;  
thence N00°33'40"W (assumed bearing), along the East line of said  
Section 17, a distance of 131.118 meters (430.18 feet); thence  
S89°26'20"W, a distance of 26.020 meters (85.37 feet) to a point on the  
West right-of-way line of 108th street, said line also being the East  
line of said Lot 41, Brook Valley Business Park, Lots 34 thru 46,  
inclusive & Outlot A, said point also being the point of beginning;  
thence N03°15'45"W, a distance of 43.644 meters (143.19 feet); thence  
N00°38'52"E, a distance of 11.890 meters (39.01 feet) to a point on the  
South right-of-way line of Watanabe Parkway; said line also being the  
North line of said Lot 41, Brook Valley Business Park, Lots 34 thru 46,  
inclusive & Outlot A; thence Easterly along said South right-of-way line  
of Watanabe Parkway, said line also being said North line of Lot 41,  
Brook Valley Business Park, Lots 34 thru 46, inclusive & Outlot A, on a  
curve to the left with a radius of 119.664 meters (392.60 feet), a  
distance of 12.609 meters (41.37 feet), said curve having a long chord  
which bears S87°32'158"E, a distance of 12.603 meters (41.35 feet), to  
the point of intersection of said South right-of-way line of Watanabe  
Parkway and said West right-of-way line of 108th Street, said point also  
being the Northeast corner of said Lot 41, Brook Valley Business Park,  
Lots 34 thru 46, inclusive & Outlot A; thence S00°33'40"W along said  
West right-of-way line of 108th Street, said line also being said East  
line of Lot 41, Brook Valley Business Park, Lots 34 thru 46, inclusive &  
Outlot A, a distance of 3.058 meters (10.03 feet); thence S16°08'17"W  
along said West right-of-way line of 108th Street, said line also being  
said East line of Lot 41, Brook Valley Business Park, Lots 34 thru 46,  
inclusive & Outlot A, a distance of 31.821 meters (104.40 feet); thence  
S03°50'09"W along said West right-of-way line of 108th Street, said line  
also being said East line of Lot 41, Brook Valley Business Park, Lots 34  
thru 46, inclusive & Outlot A, a distance of 21.346 meters (70.03 feet)  
to the point of beginning.

The above described tract of land contains an area of 308.989  
square meters (3325.92 square feet), more or less.

13344

R1R  
Sarpy County  
Surveyor

2002-13344A

WARRANTY DEED CITY OR COUNTY-CORPORATION (page 2)  
PROJECT: STPN-77(37) C.N.: 21860 TRACT: 2

To have and to hold said real property, hereby known to include real estate together with all Tenements, Hereditaments and Appurtenances thereunto belonging, unto said Grantee and to its successors and assigns forever.

Said Grantor does hereby covenant with said Grantee, and with its successors and assigns; that said Grantor is lawfully seized of said real property; that said real property is free from encumbrance; that said Grantor is duly authorized to sell said real property; that said Grantor warrants and will defend that title to said real property against the lawful claims of all persons, whomsoever.

Duly executed this 22 day of January, 2002 SEAL

Miller East Investments  
Corporation

ATTEST: [Signature] BY: Walter Smith

STATE OF Nebraska)  
County)

On this 22nd day of January, A.D., 2002, before me, a General Notary Public, duly commissioned and qualified, personally came William T Miller the duly authorized representatives of Miller East Investments

who acknowledged that he, she or they held the position or title set forth in the instrument, that he, she or they signed the instrument on behalf of the corporation by proper authority and that the instrument was the act of the corporation and are to me known to be said duly authorized representative or representatives and and the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

WITNESS my hand and notarial seal the day and year last above written. [Signature] Notary Public.

My commission expires the \_\_\_ day of \_\_\_, 20\_\_.



2002-13344B

WARRANTY DEED CITY OR COUNTY-CORPORATION (page 3)  
PROJECT: STPN-77(37) C.N.: 21860

TRACT: 2

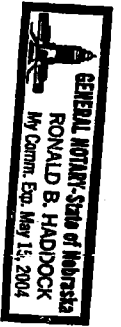
STATE OF Nebraska  
( ) ss.  
Jerry County)

On this 22 day of January A.D., 2007  
before me, a General Notary Public, duly  
commissioned and qualified, personally came

William T. Miller  
the duly authorized representative of  
Miller East Investments  
who acknowledged that he, she or they held the  
position or title set forth in the instrument,  
that he, she or they signed the instrument on  
behalf of the corporation by proper authority and  
that the instrument was the act of the  
corporation and are to me known to be said duly  
authorized representative or representatives and  
and the identical person or persons who signed  
the foregoing instrument and acknowledged the  
execution thereof to be his, her or their volunt-  
ary act and deed.

WITNESS my hand and notarial seal the day  
and year last above written.

My commission expires the 22 day of January, 2007.



NOTICE OF ASSIGNMENT OF EASEMENTS

To Whom It May Concern:

50  
N W B  
R/W PERMIT  
No. 20,224

You are hereby notified that American Telephone and Telegraph Company, successor to American Telephone and Telegraph Company of Nebraska assigned certain easements for communication systems to Northwestern Bell Telephone Company on property located in various counties in the State of Nebraska. Such assignment covers the following described easements located in the county named below:

GRANTORS: Victor L. Aulin  
Ida Matilda Aulin

DESCRIPTION: ~~288~~ ~~W&M~~ Section 17, Township 14N, Range 12E,  
County of Sarpy, and State of Nebraska.

FILED FOR RECORD 3-16-77 AT 9:11 A M. IN BOOK 50 OF Misc Dec. 25  
PAGE 187 Carl F. Hillstedt REGISTER OF DEEDS, SARPY COUNTY, NEB.

and which is recorded in the records of Sarpy County,  
Nebraska, on the 9th day of October, 1940  
in Book 10 Misc, Page 351.

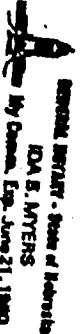
NORTHWESTERN BELL TELEPHONE COMPANY  
An Iowa Corporation

Date February 18, 1977 By Victor L. Aulin  
R/W & Liaison Coordinator

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS

On this 18th day of February, 1977, before me,  
a Notary Public, duly commissioned and qualified in and for said County,  
personally came the above named George B. Givler, R/W & Liaison Coordinator  
of Northwestern Bell Telephone Company, who is personally known to me to be the identical person whose  
name is affixed to the above Notice of Assignment of Easements. He acknowl-  
edges the execution thereof to be his voluntary act and deed as such  
representative, and the voluntary act and deed of the said Northwestern  
Bell Telephone Company.

Witness my hand and notarial seal the day and year last above  
written.



Ida B. Myers  
Notary Public

My commission expires the 21st day of June, 1980

File # 64295



51-88

THIS EASEMENT IS RE-RECORDED  
TO CORRECT ERRORS IN EXHIBITS  
A AND B ATTACHED HERETO.

PERMANENT EASEMENT

THIS EASEMENT AGREEMENT, made this 27<sup>th</sup> day of December, 1978 between the undersigned, CAMPBELL SOUP COMPANY, a New Jersey corporation, herein called "Grantor", and SANITARY AND IMPROVEMENT DISTRICT NO. 59 OF SARPY COUNTY, NEBRASKA, its successors and assigns, herein called "Grantee",

WITNESSETH:

1. In consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, Grantor, being the owner of the property hereinafter described, does herewith convey, give and grant unto the Grantee a permanent easement over, on, across, and under the real property in Sarpy County, Nebraska, as described and drawn in Exhibits "A" and "B" respectively attached hereto.

2. The scope and purpose of said Easement is for the maintenance, repair, replacement and renewal of a sanitary sewer pipeline, including all necessary manholes and other related appurtenances, and/the transmission through said sewer of sanitary sewage. Grantee and its contractors and engineers shall have full right and authority to enter upon said Easement in order to perform any of the acts and functions described within the scope and purposes of the Easement.

3. Grantor agrees not to place any building or other structure of any kind on the permanent easement area except that railroad tracks, ties, and all other appurtenances required to construct and operate a railroad spur track or multiple spur tracks, paving, storm sewers, and gas, water, electricity or telephone utility lines and structures shall be permitted and the permanent easement area may be used by Grantor for parking, storm sewers and utility and rail access to its lands. Grantor further agrees not to do any thing upon the permanent easement area which would impair the efficient operation and flow of sanitary sewage through the sewer lines located in the permanent easement area. Grantor further agrees that it will adjust the manholes to grade level in the event of any change of grade of the permanent easement area.

4. By accepting and recording this Easement, Grantee agrees to make good or cause to be made good to the owner or owners of the property in which same are planted or constructed any and all damage that may be done by reason of construction, alterations, maintenance, inspection, repairs or reconstruction in the way of damage to crops, trees, grounds, railroad tracks, or other permitted improvements abutting thereon.

5. Grantor does hereby covenant and agree with the said Grantee, its successors and assigns, that at the time of the execution and delivery of this Easement Grantor is lawfully seized of said premises; that Grantor has good right and lawful authority to grant said permanent easement; and Grantor further hereby covenants to warrant and defend said easement ways against the lawful claims of all persons whomsoever.

6. This easement grant shall run in favor of and be binding upon the respective successors and assigns, contractors, and agents of the Grantor and Grantee.

FILED FOR RECORD AT 2-8-78 3:05 P M. IN BOOK 51 OF Miss Rec.  
PAGE 88 Carl L. Hillel REGISTER OF DEEDS, SARPY COUNTY, NEB. 12 25

FILED FOR RECORD AT 2-2-78 3:50 P M. IN BOOK 51 OF Miss Rec.  
PAGE 71 Carl L. Hillel REGISTER OF DEEDS, SARPY COUNTY, NEB. 12 25  
Rec'd [Signature] [Signature]

51-88A

IN WITNESS WHEREOF, the Grantor herein, for itself, its successors and assigns, has caused the due execution hereof as of the day and year first above written.

CAMPBELL SOUP COMPANY, a  
New Jersey Corporation,

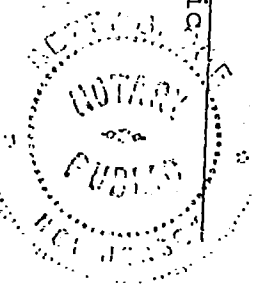
By *W. A. Schmidt*  
Title: Vice President - Capital Improvements

STATE OF NEW JERSEY )  
COUNTY OF CAMDEN ) SS.

On this 27th day of January, 1978, before me, a Notary Public, personally appeared W. A. Schmidt and the same person who signed the foregoing document on behalf of said corporation, and he acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

WITNESS my hand and seal the day and year first above written.

My Commission expires: July 19, 1978

Notary Public  


51-88B

LEGAL DESCRIPTION  
PERMANENT SEWER EASEMENT

THE FOLLOWING IS A LEGAL DESCRIPTION FOR A PERMANENT SEWER EASEMENT LOCATED IN THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 14 RANGE 12E, OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 17, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M.; THENCE NORTH 08°27'08" WEST A DISTANCE OF 510.74 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 79°54'51" WEST A DISTANCE OF 1,049.56 FEET; THENCE SOUTH 37°45'36" WEST A DISTANCE OF 152.94 FEET; THENCE SOUTH 02°09'51" WEST A DISTANCE OF 191.44 FEET; THENCE NORTH 89°52'01" WEST A DISTANCE OF 464.83 FEET; THENCE SOUTH 80°14'24" WEST A DISTANCE OF 151.08 FEET; THENCE NORTH 16°41'23" WEST A DISTANCE OF 20.15 FEET; THENCE NORTH 80°14'24" EAST A DISTANCE OF 155.24 FEET; THENCE SOUTH 89°52'01" EAST A DISTANCE OF 447.25 FEET; THENCE NORTH 02°09'51" EAST A DISTANCE OF 178.56 FEET; THENCE NORTH 37°45'36" EAST A DISTANCE OF 167.06 FEET; THENCE NORTH 79°54'51" EAST A DISTANCE OF 1,064.40 FEET; THENCE ON A 1,450 FOOT RADIUS CURVE TO THE RIGHT AN ARC DISTANCE OF 21.24 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT SEWER EASEMENT CONTAINS APPROXIMATELY 0.92 ACRES (40,224.18 SQUARE FEET).

EXHIBIT "A"

GOLLEHON, SCHEMMER & ASSOCIATES, INC.  
ARCHITECTS • ENGINEERS • PLANNERS

FMS

INM

FMY

10/10/77

57-880

N16°41'23"W  
20.15'

Existing 20' 5.41.D. #124  
Permanent Sewer Easement

S80°14'24"W  
151.08' }  
N80°14'24"E  
155.24'

N89°52'01"W  
464.83'  
S89°52'01"E  
447.25'

N02°09'51"E  
178.56'

N37°45'36"E  
167.06'

S02°09'51"W  
191.44'  
S37°45'36"W  
152.94'

S79°54'51"W  
1049.56'  
N79°54'51"E  
1064.40'

N08°27'08"W  
510.74'

R=1450.00'  
A=21.24'

East 1/4 Corner  
Sec. 17-14-12

Point of Beginning

Olive Street  
108th Street

0 30 100 200 400  
Graphic Scale: 1"=200'

MILWAUKEE FEB 5 1976

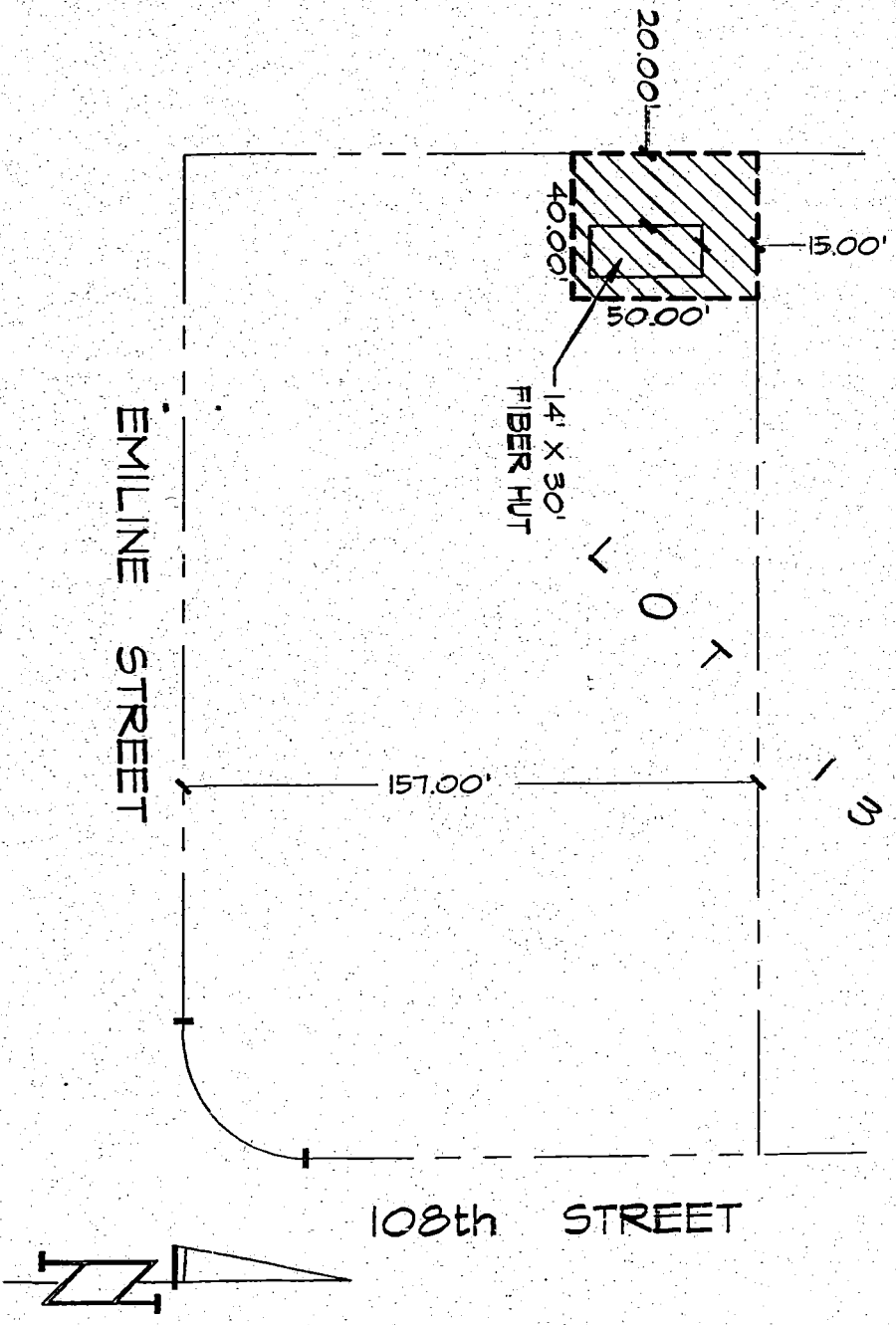
GOLLEHON, SCHEMWER & ASSOCIATES, INC.  
ARCHITECTS • ENGINEERS • PLANNERS

EXHIBIT "B"

95-21004 A

ROW # 20099  
SUDS, INC.  
108TH & EMILINE STREETS  
NE 1/4 NE 1/4  
SEC 17 T-14-N, R-12-E  
SARPY COUNTY

ATTACHMENT "A"  
PLOT PLAN  
LEGAL DESCRIPTION



SCALE 1" = 50'

### LEGAL DESCRIPTION

THE WEST 40.00 FEET OF THE NORTH 50.00 FEET OF THE SOUTH 157.00 FEET OF LOT 13, BROOK VALLEY BUSINESS PARK, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA.

KMIK SHOP  
TD2 FILE NO. 125-141  
DATE: OCT. 27, 1995  
JAS  
THOMPSON, DREESSEN AND DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860

95-21004 B

ROW # 20099  
SUDS, INC.  
108TH & EMILINE STREETS

ATTACHMENT "B"  
SPECIAL STIPULATIONS

1. AS PART OF THIS AGREEMENT, US WEST AGREES TO PAY ONE-THIRD THE COST TO MOVE THE SEWER LINE WHICH IS CURRENTLY UNDER THE AREA DESIGNATED FOR THE MAXIHUT. THE APPROXIMATE COST IS \$3,000.00. US WEST'S SHARE WOULD BE APPROXIMATELY \$1,000.00.
2. SUDS, INC. RESERVES THE RIGHT TO APPROVE THE EXTERIOR FACADE AND THE ROOF COLOR OF THE MAXIHUT, WHICH MUST MEET COVENANTS AND RESTRICTIONS APPROVED FOR THE SITE.

OWNER *Spill v. SUDS, INC*

INSURANCE DEPARTMENT

95-21004

95 NOV 30 AM 10: 55

REGISTER & FEES

*Re: S. D. ...*

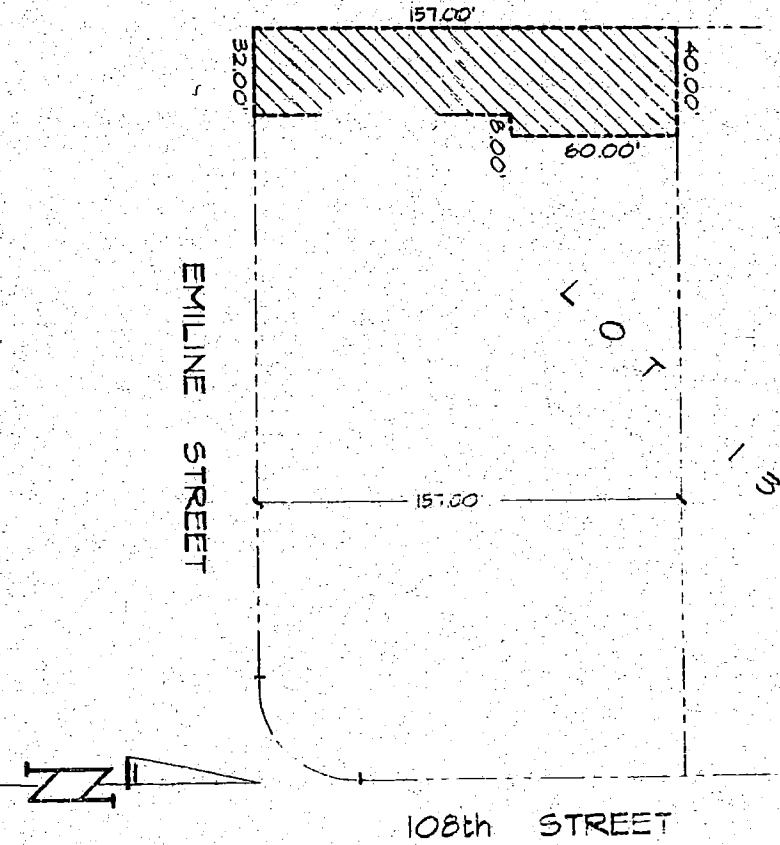
95-21004

Counter    
 Verify    
 D.E.    
 Proof    
 Fee \$ 220.50   
 CK    
 Cash    
 Chg

\*\*\*\*\*

THIS PAGE WAS ADDED FOR RECORDERS INFORMATION

# EXHIBIT "B"



SCALE 1" = 50'

## LEGAL DESCRIPTION

THE WEST 32.00 FEET OF THE SOUTH 97.00 FEET OF LOT 13, BROOK VALLEY BUSINESS PARK, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA, TOGETHER WITH THE WEST 40.00 FEET OF THE NORTH 80.00 FEET OF THE SOUTH 157.00 FEET OF SAID LOT 13.

KWIK SHOP

TD2 FILE NO. 1014-01-E2

DATE: NOV. 6, 1995

THOMPSON, DRESSSEN AND DORNER, INC., 10856 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-9960





97-025361 A

- B. All future advances from Beneficiary to Trustor or other future obligations of Trustor to Beneficiary under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Deed of Trust whether or not this Deed of Trust is specifically referred to in the evidence of debt.
- C. All obligations Trustor owes to Beneficiary, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Trustor and Beneficiary.
- D. All additional sums advanced and expenses incurred by Beneficiary for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Beneficiary under the terms of this Deed of Trust, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Trustor's performance under the terms of any instrument evidencing a debt by Trustor to Beneficiary and any Deed of Trust securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Deed of Trust as Trustor, each Trustor agrees that this Deed of Trust will secure all future advances and future obligations described above that are given to or incurred by any one or more Trustor, or any one or more Trustor and others. This Deed of Trust will not secure any other debt if Beneficiary fails, with respect to such other debt, to make any required disclosure about this Deed of Trust or if Beneficiary fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Trustor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Deed of Trust.

- 6. **WARRANTY OF TITLE.** Trustor covenants that Trustor is lawfully seized of the estate conveyed by this Deed of Trust and has the right to irrevocably grant, convey and sell to Trustee, in trust, with power of sale, the Property and warrants that the Property is unencumbered, except for encumbrances of record.

- 7. **CLAIMS AGAINST TITLE.** Trustor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Beneficiary may require Trustor to provide to Beneficiary copies of all notices that such amounts are due and the receipts evidencing Trustor's payment. Trustor will defend title to the Property against any claims that would impair the lien of this Deed of Trust. Trustor agrees to assign to Beneficiary, as requested by Beneficiary, any rights, claims or defenses which Trustor may have against parties who supply labor or materials to improve or maintain the Property.

- 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Deed of Trust, Trustor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Beneficiary any notices that Trustor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept, any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Beneficiary consents in writing.

- 9. **DUE ON SALE OR ENCUMBRANCE.** Beneficiary may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Trustor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Deed of Trust is released.

- 10. **TRANSFER OF AN INTEREST IN THE GRANTOR.** If Trustor is an entity other than a natural person (such as a corporation or other organization), Beneficiary may demand immediate payment if (1) a beneficial interest in Trustor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation. However, Beneficiary may not demand payment in the above situations if it is prohibited by law as of the date of this Deed of Trust.

- 11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Trustor is an entity other than a natural person (such as a corporation or other organization), Trustor makes to Beneficiary the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Trustor is an entity which is duly organized and validly existing in the Trustor's state of incorporation (or organization). Trustor is in good standing in all states in which Trustor transacts business. Trustor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Trustor operates.
- B. The execution, delivery and performance of this Deed of Trust by Trustor and the obligation evidenced by the Evidence of Debt are within the power of Trustor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Trustor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Beneficiary's prior written consent, Trustor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

- 12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Trustor will keep the Property in good condition and make all repairs that are reasonably necessary. Trustor will give Beneficiary prompt notice of any loss or damage to the Property. Trustor will keep the Property free of noxious weeds and grasses. Trustor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Beneficiary's prior written consent. Trustor will notify Beneficiary of all demands, proceedings, claims, and actions against Trustor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Trustor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Trustor also agrees that the nature of the occupancy and use will not change without Beneficiary's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Beneficiary's prior written consent except that Trustor has the right to remove items of personal property comprising a part of the Property that become worn

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
PP-012291  
99 APR 26 PM 12: 23  
Steve S. [Signature]  
REGISTER OF DEEDS

PP-012291  
REVIEW  
SEARCHED  
INDEXED  
SERIALIZED  
FILED  
APR 26 2000  
SARPY CO. NE.  
REGISTER OF DEEDS



This instrument was drafted by Williams Pipe Line Company, a Delaware corporation, P. O. Box 21629, Tulsa, Oklahoma 74121-1629, 918/598-4028.

PARTIAL RELEASE AND GRANT OF RIGHT OF WAY

KNOW ALL MEN BY THESE PRESENTS that WILLIAMS PIPE LINE COMPANY, (formerly Williams Brothers Pipe Line Company), a Delaware corporation with its principal place of business in Tulsa, Oklahoma, party of the first part, (hereinafter called "WPL"), for and in consideration of One Dollar (\$1.00) in hand paid by SOUTHWEST MALL PARTNERS LIMITED PARTNERSHIP, a Nebraska limited partnership, party(ies) of the second part, (hereinafter called "Landowner", whether one or more) and the covenants hereinafter contained to be kept by Landowner, WPL does hereby release and forever quit claim, with the intent to extinguish, all of its right, title and interest acquired by that certain Right of Way Agreement executed by Caroline Borman and Socony-Vacuum Oil Company, on the 27th day of February, 1941, and filed for record in the office of the Register of Deeds of Sarpy County, Nebraska on the 11th day of March, 1941, in Book 10 at Page 455 and assigned to Magnolia Pipe Line through an assignment and conveyance recorded in Book 26 at Page 126 in Sarpy County on January 14, 1960, and later assigned from Magnolia Pipe Line/Socony-Vacuum Oil Company to Williams Pipe Line through an assignment and conveyance recorded in Book 57 at Page 31 in the said county and state on January 18, 1984, in and to the following and no other described land in the County of Sarpy and the State of Nebraska, (Owner's Land) which Landowner represents and warrants to be the present owner of:

See attached Exhibit "A", attached hereto and made a part hereof;

EXCEPTING AND RESERVING unto WPL, its successors and assigns, all right, title and interest acquired by virtue of the aforementioned Right of Way Agreement dated February 27, 1941, in and to the following described parcel or strip of land (hereinafter called the "Easement Tract"):

99-012291A

A 100.00 foot wide strip of land lying within the NW/4 of the NW/4 of Section 17, Township 14N, Range 12E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, the centerline of said 100.00 foot wide strip of land being 50 feet to the east and 50 feet to the west of the pipeline and described as follows: Commencing at the NW corner of said NW/4;

Thence N87°38'24"E (assumed bearing) 736.43 feet on the northerly line of said NW/4; Thence S04°44'45"E 68.93 feet to the southerly line of Interstate 80 right-of-way and the point of beginning;

Thence continuing S04°44'45"E 169.79 feet to the southerly line of Harry Anderson Avenue right-of-way and the point of termination with the outer limits of said 100.00 foot wide strip of land being extended to meet the southerly line of said Interstate 80 and the northerly line of said Harry Anderson Avenue; also

A 100.00 foot wide strip of land lying within the NW/4 of the NW/4 of Section 17, Township 14N, Range 12E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, the centerline of said 100.00 foot wide strip of land being 50 feet to the east and 50 feet to the west of the pipeline and described as follows: Commencing at the NW corner of said NW/4;

Thence N87°38'24"E (assumed bearing) 736.43 feet on the northerly line of said NW/4; Thence S04°44'45"E 659.13 feet to the southerly line of Harrison Street right-of-way and the point of beginning;

Thence continuing S04°44'45"E 483.66 feet; Thence S47°34'20"W 159.40 feet to the easterly line of the Union Pacific Railroad and the point of termination with the outer limits of said 100.00 foot wide strip of land being extended to meet the southerly line of said Harrison Street and the easterly line of said Union Pacific Railroad.

**AND FURTHER EXCEPTING AND RESERVING unto WPL, the right of ingress and egress and the right to use temporary work space as desired, on, over, and across Owner's Land.**

It is strictly understood that nothing herein contained shall in anywise diminish WPL's right, title and interest, in and to the Easement Tract above excepted unto WPL.

It is further understood and agreed that the Landowner will not erect, construct, plant or create any building, improvement, roads, structure, trees, shrubs or obstruction of any kind either on, above, or below the surface of the ground on the Easement Tract, or change the grade or elevation thereof, or cause or permit these things to be done by others, without the prior written permission of WPL. Landowner further agrees not to

99-012291B

perform or allow to be performed by others any such construction or mining activities which would endanger lateral support for the ground within the Easement Tract. The Landowner shall assume, indemnify, save harmless, and at WPL's option, defend WPL, its affiliated companies and their directors, officers, employees, and agents, and their successors and assigns, from all cost, loss, damage, expense, or claim of any nature arising from any acts of Landowner, permitted by WPL or otherwise, or from the existence of any construction or mining so permitted.

In consideration of One and no/100 Dollar (\$1.00) and other consideration paid by WPL to Landowner, the receipt and sufficiency of which is hereby acknowledged, the aforementioned Right of Way Agreement is hereby amended by Landowner in that Landowner hereby grants, sells and conveys to WPL the fee, uninterrupted, perpetual and commercial right, privilege and easement to lay, construct, maintain, inspect, operate, repair, replace, change the size of, protect and remove (a) existing and future pipelines for the transportation of liquids, gases or other materials which can be transported through a pipeline, with fittings, valves, cathodic protection equipment and related appurtenances, and (b) existing and future lines, cables, conduits and related equipment and appurtenances for telecommunications or other purposes, whether or not related to pipelines (all the foregoing being sometimes hereinafter collectively called "WPL's Lines") over, through, under and across the Easement Tract, together with the right of ingress and egress across Owner's Land for all purposes incident to the exercise of the aforesaid rights, the right to environmentally remediate Owner's Land if a release should occur from WPL's Lines and the right to place on Owner's Land incidental equipment to facilitate the exercise of the aforesaid rights. No additional compensation shall be payable to Landowner for the aforesaid rights or any damage resulting to the property of Landowner, Landowner's successors or assigns, except where expressly provided for in the aforementioned Right of Way Agreement; provided, however, WPL shall have the right to keep the Easement Tract clear of trees, undergrowth, brush, ornamental or other vegetation. The aforementioned Right of Way Agreement is restated accordingly.

The covenants contained in this Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their personal representatives, heirs, successors and assigns. WPL shall have the right to assign the rights granted herein or in the aforementioned Right of Way Agreement in whole or in part. WPL executes this Agreement solely on its own behalf. WPL does not represent, through this Agreement or otherwise, any other entity other than WPL and its future successors and assigns.

It is further understood and agreed that WPL is hereby released from the covenants contained in the aforesaid Right of Way Agreement as to the lands herein released from the burdens thereof.

99-012291C

IN WITNESS WHEREOF, we hereunto set our hands and seals on the day and year below our signatures indicated.

WILLIAMS PIPE LINE COMPANY

By Bryan E. Young  
Bryan E. Young, Manager  
Real Estate Services  
Attorney-in-Fact  
Date 4-19-99

SOUTHWEST MALL PARTNERS  
LIMITED PARTNERSHIP:  
By: Jon E. Batesole  
Jon E. Batesole  
VICE PRESIDENT

Date 3-26-99

99-012291D

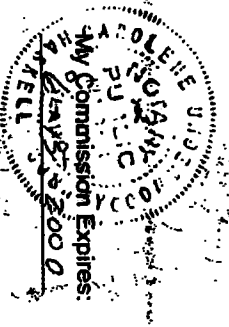
STATE OF OKLAHOMA )  
 ) ss  
COUNTY OF TULSA )

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 19th day of April, 1999, personally appeared Bryan E. Young, Manager of Real Estate Services and Attorney-in-Fact for Williams Pipe Line Company, a Delaware corporation, by virtue of an April 1, 1998, Power of Attorney filed for record July 27, 1998, in the County of Tulsa, State of Oklahoma, in Book 6083 at page 2256, as Document 98081314, and that said instrument was signed on behalf of said corporation, and said Bryan E. Young acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed by official seal at my office in said county and state the day and year last above written.

Notary Public

Charlene M. Sarto



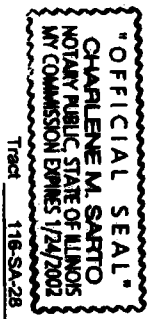
STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

On this 26th day of March, 1999, before me appeared Ton E. Babasole, to me personally known, who, being by me duly sworn, did say that he/she is the Vice President of M. B. Venture of Southwest Mail Partners Limited Partnership and that said instrument was signed and sealed in behalf of said limited partnership by authority of its general partner, and said Vice President acknowledged said instrument to be the free act and deed of said limited partnership. Corporation, the general partner

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

Charlene M. Sarto  
Notary Public

My Commission Expires:  
1-24-02



99-012291E

File No. T-9707710

EXHIBIT 'A'

Commencing at the North Quarter corner of Section 17-14-12; thence South  $02^{\circ}33'29''$  East (assumed bearing) along the East line of the Northwest Quarter of said Section 17-14-12, a distance of 33 feet to the point of beginning (said point also being located on the South right-of-way line of Harrison Street); thence North  $87^{\circ}38'24''$  East along the said South right-of-way line of Harrison Street, a distance of 336.46 feet; thence South  $00^{\circ}08'15''$  West, a distance of 995.95 feet; thence South  $21^{\circ}21'40''$  East, a distance of 1052.34 feet; thence South  $12^{\circ}04'42''$  East, a distance of 690.63 feet to a point located on the Northernly right-of-way line of the C.B. & Q. Railroad (said point also being located on a curve); thence Southwesterly along a 2914.79 foot radius curve to the left (said curve a.k.a. The Northernly right-of-way line of the C.B. & Q. Railroad), an arc distance of 1214.42 feet (chord bearing South  $67^{\circ}52'58''$  West, chord distance of 1205.64 feet) to a point located on the Northeastly right-of-way line of the Union Pacific Railroad; thence North  $42^{\circ}59'50''$  West along the said Northeastly right-of-way line of the Union Pacific Railroad, a distance of 3,418.13 feet to a point located on the Southeastly right-of-way line of said Harrison Street; thence North  $45^{\circ}15'09''$  East along the said Southeastly right-of-way line of Harrison Street, a distance of 459 feet to a point of curvature; thence Northeastly along a 400 foot radius curve to the right (said curve a.k.a. the Southeastly right-of-way line of Harrison Street), an arc distance of 175 feet (chord bearing North  $57^{\circ}47'10''$  East, chord distance of 173.61 feet) to a point of tangency; thence North  $74^{\circ}27'12''$  East along the said Southeastly right-of-way line of Harrison Street, a distance of 377.7 feet to a point located on the said South right-of-way line of Harrison Street; thence North  $87^{\circ}33'41''$  East along the said South right-of-way line of Harrison Street, a distance of 1751.19 feet to the point of beginning EXCEPT the parcel of real estate conveyed to Sarpy County, Nebraska in Deed filed April 7, 1967 in Deed Book 162 at page 868.



FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2000-03631

2000 FEB 22 AM 10: 28

*George J. Petersen*

REGISTER OF DEEDS  
REQUEST FOR DEED OF RECONVEYANCE

Counter *HTS*  
Verify *HTS*  
D.E. *HTS*  
Proof *HTS*  
Fee \$ *2.00*  
ok  Cash  Chg  *HTS*

This is to certify that the debt secured by the Deed of Trust identified below has been paid and the below named Trustee is requesting to execute this Deed of Reconveyance.

STATE OF NEBRASKA )  
SS )  
COUNTY OF SARPY )

Bank of Nebraska  
By: *George J. Petersen*  
Title: Assistant Vice President

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of February, 2000,  
By Jan D. Petersen, Assistant Vice President, of Bank of Nebraska,  
A Nebraska Corporation, on behalf of the corporation.



*Stacy A. Rocha*  
NOTARY PUBLIC

DEED OF RECONVEYANCE

WHEREAS, all of the indebtedness secured by the Deed of Trust executed by Brook Valley Limited Partnership, A Nebraska Partnership, as Trustor to Bank of Nebraska as Trustee for the benefit of Bank of Nebraska the beneficiary named therein, dated November 4, 1997 and recorded in the office of the Register of Deeds in Sarpy County, Nebraska, in Book number \_\_\_\_\_ Page number \_\_\_\_\_ or Instrument number 97-025361 has been paid; and

WHEREAS, the Beneficiary under said Deed of Trust has requested that the property held by the Trustee be reconveyed, without warranty, to the person or persons entitled thereto.

NOW THEREFORE, in consideration of such payment and in accordance with the written request of the Beneficiary named herein, the undersigned, as Trustee, does hereby grant without warranty, to the person or persons entitled thereto all the estate and interest held by it, as Trustee, under the above described Deed of Trust in the following described property:

Lots 35, 42, the southeasterly 150 feet of Lot 43, the northeasterly 150 feet of Lot 44, 45, 46, Brook Valley Business Park, a subdivision in Sarpy County, Nebraska.

Dated: February 7, 2000  
STATE OF NEBRASKA )  
SS )  
COUNTY OF SARPY )

Bank of Nebraska  
By: *George J. Petersen*  
Title: Assistant Vice President  
Trustee

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of February 2000,  
By Jan D. Petersen, Assistant Vice President of Bank of Nebraska,  
A Nebraska corporation, on behalf of the corporation.



*Stacy A. Rocha*  
NOTARY PUBLIC

03631 HTS 99840344

FILED SARPYP COUNTY, NE.  
INSTRUMENT NUMBER  
**2000-27634**  
2000 OCT 30 AM 10:11  
*Steve J. Sandberg*  
REGISTER OF DEEDS

Counter *AKW*  
Verify *[Signature]*  
D.E. *[Signature]*  
Proof *[Signature]*  
Fee \$ *35.50*  
OK  Cash  Chg

<sup>1914</sup>WHEN RECORDED MAIL TO:  
NEBRASKA STATE BANK OF OMAHA  
MAIN OFFICE  
3211 N. 90TH ST.  
OMAHA, NE 68134

FOR RECORDER'S USE ONLY

**DEED OF TRUST**

MAXIMUM LIEN. The lien of this Deed of Trust shall not exceed at any one time \$2,721,378.47.

THIS DEED OF TRUST is dated October 28, 2000, among BROOK VALLEY LIMITED PARTNERSHIP; A NEBRASKA LIMITED PARTNERSHIP ("Trustor"); NEBRASKA STATE BANK OF OMAHA, whose address is MAIN OFFICE, 3211 N. 90TH ST., OMAHA, NE 68134 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Nebraska State Bank of Omaha, whose address is 3211 N. 90TH ST., OMAHA, NE 68134 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor conveys to Trustee in trust, WITH POWER OF SALE for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or annexed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in ditches with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in SARPY County, State of Nebraska:

TAX LOT 1A1A1A & TAX LOT 2B2, S OF RR, 17-14-12 (17.83 AC) (REFER 11123036), SARPY COUNTY NEBRASKA

The Real Property or its address is commonly known as NOT YET ASSIGNED, NE

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in the Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Trustor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matter; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor

2000-27634 A

DEED OF TRUST  
(Continued)

Page 2

any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property, and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring after to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any shipping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, sand, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor shall maintain in good faith any permit in good faith any permit, ordinance, or regulation and without compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon nor leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and penalties levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any event, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall substantiate the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust:

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any co-insurance clause, and with a standard mortgage clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with trunks and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurances, including but not limited to hazard, Business Interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in term, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurances in term satisfactory to Lender, including stipulations that coverages will not be canceled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be assigned by the Director of the Federal Emergency Management Agency as a special flood hazard area. Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limit set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurances for the term of the lien.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien attaching to the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditures, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Unapplied Insurance at Sale. Any unapplied insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; the then current replacement value of such property; and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value

DEED OF TRUST  
(Continued)

2000-27634B

replacement cost of the Property.

**LENDER'S EXPEDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under the Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date insured or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of and accepted by Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustor or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments and documentation as Lender may request from time to time to permit participation.

**Compliance With Laws.** Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be constituting in nature, and shall remain in full force and effect until such time as Trustor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver, or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney's fees incurred by Trustor or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Trustor shall execute such documents in addition to the Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in researching, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute those to which this section applies: (1) a specific tax upon the type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Trustor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Trustor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall assemble the Personal Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

**Addresses.** The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (such as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and other liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Trustor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustor a request for full reconveyance and shall execute and deliver to Trustor suitable

DEED OF TRUST  
(Continued)

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statements of termination of any financing statement on the evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Trustor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Trustor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Trustor.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents. If such a failure is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within twenty (20) days; or (b) if the cure requires more than twenty (20) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**Default on Other Payments.** Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** The Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution or termination of Trustor's existence as a going business or the death of any partner, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

**Creditor or Foreclosure Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim, which is the basis of the creditor's forfeiture proceeding and if Trustor gives Lender written notice of the creditor's forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any Indebtedness or other obligation of Trustor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If such a failure is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within twenty (20) days; or (b) if the cure requires more than twenty (20) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time hereafter, Trustor or Lender may exercise any one or more of the following rights and remedies:

**Acceleration Upon Default; Additional Remedies.** If any Event of Default occurs as per the terms of the Note secured hereby, Lender may declare all Indebtedness secured by the Deed of Trust to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Lender may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part of the Property or interest in the Property; increase the income from the Property or protect the security of the Property; and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection attorneys' fees, to any Indebtedness secured by this Deed of Trust, all in such order as Lender may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof shall run cure or waive any default or notice of default under this Deed of Trust or invalidate any act done in response to such default or pursuant to such notice of default; and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Trustor or Lender shall be entitled to exercise every right provided for in the Note or the Related Documents or by law upon the occurrence of any event of default, including the right to exercise the power of sale;
- (b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver or specifically enforce any of the covenants hereof; and
- (c) Deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate offices of the County in which the Property is located; and

(d) With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Nebraska Uniform Commercial Code.

(e) With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under Foreclosure by Power of Sale. If Lender elects to foreclose by exercise of the Power of Sale herein contained, Lender shall notify Trustor and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured by this Deed of Trust as Trustee may require.

(f) Upon receipt of such notice from Lender, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recording of such Notice of Default and other Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or parts as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any notices or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation Trustor, Trustee, or Lender, may purchase at such sale.

(g) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Trust, including costs of

DEED OF TRUST  
(Continued)

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evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of (i) all sums encumbered under the terms of the Deed of Trust or under the terms of the Note not then repaid, including but not limited to accrued interest and late charges, (ii) all other sums then secured hereby, and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may in the manner provided by law postpone sale of all or any portion of the Property.

**Remedies Not Exclusive.** Trustee and Lender, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured by this Deed of Trust and to exercise all rights and powers under the Deed of Trust, under the Note, under any of the Related Documents, or under any other agreement or any laws now or hereafter in force, notwithstanding, some or all of such indebtedness and obligations secured by the Deed of Trust may now or hereafter be otherwise secured, whether by mortgage deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained in the Deed of Trust, shall prejudice or in any manner affect Trustee's or Lender's right to realize upon or enforce any other security now or hereafter held by Trustee or Lender. It being agreed that Trustee and Lender, and each of them, shall be entitled to enforce this Deed of Trust or any other security now or hereafter held by Lender or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other remedy given in this Deed of Trust or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given in this Deed of Trust or Lender or to which either of them may be otherwise entitled or remedy given by the Note or any of the Related Documents to Trustee or Lender or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Lender, and either of them may pursue inconsistent remedies. Nothing in this Deed of Trust shall be construed as prohibiting Lender from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Request for Notice. Trustor, on behalf of Trustor and Lender, hereby requests that a copy of any Notice of Default and a copy of any Notice of Sale under this Deed of Trust be mailed to them at the addresses set forth in the first paragraph of this Deed of Trust.

**Attorney's Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorney's fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorney's fees and Lender's legal expenses, whether or not there is a lawsuit, including attorney's fees and expenses for depository proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyor's reports, and appraisal fees, the insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** Trustee shall have all of the rights and duties of Lender as set forth in this section.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subdivision or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Trustee, Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of SARGENT County, State of Nebraska. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor, the book and page (or computer system reference) where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by all the beneficiaries under this Deed of Trust or their successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by teletransmission (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

**SHARANTY THIS DEED OF TRUST ALSO SECURES THE GUARANTY OF THE TRUSTOR DATED OCTOBER 28, 2000.**  
**SHARANTY PROVISIONS.** The following provisions govern this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be changed or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by, construed and enforced in accordance with Federal law and the laws of the State of Nebraska. This Deed of Trust has been accepted by Lender in the State of Nebraska.

**Choice of Venue.** If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of DOUGLASS County, State of Nebraska.

**Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. The delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of the Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provisions of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

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DEED OF TRUST  
(Continued)

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**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstances, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstances. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegally, invalidly, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nebraska as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Beneficiary.** The word "Beneficiary" means NEBRASKA STATE BANK OF OMAHA, and its successors and assigns.

**Borrower.** The word "Borrower" means BROOK VALLEY LIMITED PARTNERSHIP, and all other persons and entities signing the Note in whatever capacity.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Pawns.

**Default.** The word "Default" means the Default set forth in the Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-489 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the Events of Default set forth in this Deed of Trust in the Events of Default section of this Deed of Trust.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or toxic characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, fixtures, additions, replacements and other structures on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in the Deed of Trust.

**Lender.** The word "Lender" means NEBRASKA STATE BANK OF OMAHA, its successors and assigns.

**Note.** The word "Note" means the promissory note dated October 25, 2000, in the original principal amount of \$2,721,378.47 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property, together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property, and together with all proceeds (including without limitation all insurance proceeds and refund of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in the Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranty, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.


**Trustee.** The word "Trustee" means Nebraska State Bank of Omaha, whose address is 3211 N. 80TH ST., OMAHA, NE 68134 and any substitute or successor trustee.

**Trustor.** The word "Trustor" means BROOK VALLEY LIMITED PARTNERSHIP.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.  
TRUSTOR:

BROOK VALLEY LIMITED PARTNERSHIP

General  
PRIME REALTY, INC., Partner of BROOK VALLEY LIMITED PARTNERSHIP

By:   
JAMES MCCARTY, PRESIDENT of PRIME  
REALTY, INC.

DEED OF TRUST  
(Continued)

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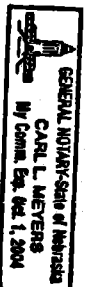
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PARTNERSHIP ACKNOWLEDGMENT

STATE OF NEBRASKA )  
 ) SS  
COUNTY OF SARPY )

On this 29 day of Oct, 2000, before me, the undersigned Notary Public, personally appeared JAMES V. MCCARTY, PRESIDENT of PRIME REALTY, INC.

A NEBRASKA LIMITED PARTNERSHIP, and known to me to be partner or designated agent of the partnership that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the partnership, by authority of statute or its Partnership Agreement, for the uses and purposes herein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the partnership.



By [Signature]  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

REQUEST FOR FULL RECONVEYANCE  
(To be used only when obligations have been paid in full)

To: \_\_\_\_\_ Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust) and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: \_\_\_\_\_ Beneficiary: \_\_\_\_\_  
By: \_\_\_\_\_  
His: \_\_\_\_\_



RECORDER NOTE  
check meters + boards

FILED SAPPY CO. NE.  
INSTRUMENT NUMBER  
2001-11650  
2001 APR 27 P 3:20 P  
Dennis J. Sappy  
REGISTER OF DEEDS

Counter PD  
Verify AKR  
D.E. AKR  
Proof AKR  
Fee \$ 10.50  
Ck  Cash  Chg   
3816

WHEN RECORDED MAIL TO:  
NEBRASKA STATE BANK OF OMAHA  
3211 N 90TH STREET  
OMAHA, NE 68134

FOR RECORDER'S USE ONLY

DEED OF TRUST

MAXIMUM LEND. The lien of this Deed of Trust shall not exceed at any one time \$744,000.00.

THIS DEED OF TRUST is dated April 19, 2001, among PRIMO, L.L.C., A NEBRASKA LIMITED LIABILITY COMPANY, whose address is 2120 SOUTH 72ND STREET, SUITE 1250, OMAHA, NE 68124 ("TRUSTEE"); NEBRASKA STATE BANK OF OMAHA, whose address is 3211 N 90TH STREET, OMAHA, NE 68134 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Nebraska State Bank of Omaha, whose address is 3211 N. 90TH ST., OMAHA, NE 68134 (referred to below as "Trustee").  
CONVEYANCE AND GRANT. For valuable consideration, Trustor conveys to Trustee in trust, WITH POWER OF SALE, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or altered buildings, improvements and fixtures, all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in water with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in SAPPY County, State of Nebraska:

See SCHEDULE "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as OMAHA, NE 68134.  
Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Perms from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Perms.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INTEREST AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall safely and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.  
POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.  
Duty to Maintain. Trustor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any past owners or occupants of the Property, or (c) any actual or threatened litigation or claims or any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable Federal, State, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with the section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Maintenance, Repairs. Trustor shall not cause, conduct or permit any nuisance nor construct, permit, or suffer any deepening of or wells on or to the Property or any portion of the Property, without firsting the necessity of the foregoing. Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, sand, salt, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.  
Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed

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of Trust.

**Compliance with Governmental Requirements.** Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contract in good faith with any such law, ordinance, or regulation and without compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Trustor agrees neither to abandon nor leave unattended the Property. Trustor shall do all other acts, in addition to those set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fees and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

**Right to Cancel.** Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a suitable corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorney's fees, or other charges that could accrue as a result of a foreclosure or sale under the law. In any event, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the context proceedings.

**Evidence of Payment.** Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, retainment's lien, or other lien could be asserted on account of the work, services, or materials. Trustor will upon request of Lender furnish to Lender advance assurance satisfactory to Lender that Trustor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Trustor shall procure and maintain policies of the insurance with standard standard coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any co-insurance clause, and with a standard mortgage clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amount, coverage and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or discontinued without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any other liens on the property securing the loan, up to the maximum policy limit set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Trustor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditures, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under the Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

**Uninsured Insurance at Sale.** Any uninsured insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by the Deed of Trust at any trustee's sale or other sale held under the provisions of the Deed of Trust, or at any foreclosure sale of such Property.

**Trustor's Report on Insurance.** Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LEASING EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provisions of the Deed of Trust or any Related Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender or Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time waived or passed on the Property and paying all costs for holding, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of payment by Trustor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be secured among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of the Deed of Trust:

**Title.** Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in the single, fee and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy; (b) the report, or that the opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (c) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Lender or Lender under the Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented by the proceeding by counsel of Lender's own choice, and Trustor will defend, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in the Deed of Trust shall survive the execution and delivery of the Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of the Deed of Trust:

Proceedings. If any proceeding in condemnation is had, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor shall be the named party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or process in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the purchase in full or redemption of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney's fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in researching, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which the section applies: (1) a specific tax upon the type of Deed of Trust or upon all or any part of the indebtedness secured by the Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the indebtedness secured by the type of Deed of Trust; (3) a tax on the type of Deed of Trust chargeable against the Lender or the holder of the note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Trustor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of the available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contacts the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to the Deed of Trust as a security agreement are a part of the Deed of Trust:

Security Agreement. The instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon demand, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not added to the Property in a manner and of a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by the Deed of Trust may be obtained (such as required by the Uniform Commercial Code) are as stated on the first page of the Deed of Trust.

**FURNISH ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, mailed, or remanded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to establish, complete, perfect, continue, or preserve (1) Trustor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the lien and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on the evidencing Lender's security interest in the Real and the Personal Property. Any reconveyance so required by law shall be paid by Trustor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Trustor fails to make any payment when due under the Indebtedness.

Other Defaults. Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Trustor.

Conspicuous Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents. If such a failure is curable and if Trustor has not been given a notice of a breach of the same provisions of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure, (a) cures the failure within twenty (20) days; or (b) if the cure requires more than twenty (20) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

Default on Other Payments. Failure of Trustor within the time required by the Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Bankruptcy or Insolvency. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Trustor's (regardless of whether election to continue is made), any member withdraws from the Death or Insolvency. The dissolution of Trustor's (regardless of whether election to continue is made), any member withdraws from the

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limited liability company, or any other limitation of Trustor's existence as a going business at the death of any member, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

**Creditor or Foreclosure Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations existing under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Necessity.** Lender in good faith believes itself insecure.

**Right to Cure.** If such a failure is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within ninety (90) days; or (b) if the cure requires more than twenty (20) days, immediately initiates steps subject to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustor or Lender may exercise any one or more of the following rights and remedies:

**Acceleration Upon Default.** Additional Paragraphs. If any Event of Default occurs as per the terms of the Note secured hereby, Lender may declare all Indebtedness secured by this Deed of Trust to be due and payable and the same shall thereupon become due and payable without any prepayment, demand, protest or notice of any kind. Thereafter, Lender may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a notary appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, maintainability or rentability of the Property, and, with or without taking possession of the Property, insure the income from the Property or protect the security of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection attorney's fees, to any Indebtedness secured by this Deed of Trust, all in such order as Lender may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done in response to such default or pursuant to such notice of default; and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Trustor or Lender shall be entitled to exercise every right provided for in the Note or the Related Documents or by law upon the occurrence of any event of default, including the right to exercise the power of sale;
- (b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver or speedily enforce any of the covenants hereof; and
- (c) Deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate offices of the County in which the Property is located; and

(d) With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Nebraska Uniform Commercial Code.

**Foreclosure by Power of Sale.** If Lender elects to foreclose by exercise of the Power of Sale herein contained, Lender shall notify Trustor and shall deposit with Trustee the Deed of Trust and the Note and such receipts and evidence of expenditures made and secured by the Deed of Trust as Trustee may require.

- (a) Upon receipt of such notice from Lender, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by the Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recording of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale said by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The results in such deed of any matters or facts shall be conclusive proof of the truthness thereof. Any person, including without limitation Trustor, Trustee, or Lender, may participate at such sale.

- (b) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of the Trust, including costs of evidences of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (i) all sums demanded under the terms of this Deed of Trust or under the terms of the Note and then report, including but not limited to accrued interest and late charges; (ii) all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may in the manner provided by law postpone sale of all or any portion of the Property.

**Remedies Not Exclusive.** Trustor and Lender, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured by this Deed of Trust and to exercise all rights and powers under the Deed of Trust, under the Note, under any of the Related Documents, or under any other agreement or any law now or hereafter in force; notwithstanding, some or all of such indebtedness and obligations secured by this Deed of Trust may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptances of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained in this Deed of Trust, shall constitute or in any manner affect Trustor's or Lender's right to realize upon or enforce any other security now or hereafter held by Trustor or Lender, it being agreed that Trustor and Lender, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender or Trustor in such order and manner as they or either of them may in their absolute discretion determine. No remedy conferred upon or reserved to Trustor or Lender, is intended to be exclusive of any other remedy in this Deed of Trust or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given in this Deed of Trust or now or hereafter existing at law or in equity or by statute. Every power or remedy given by the Note or any of the Related Documents to Trustor or Lender or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustor or Lender, and other of them may pursue inconsistent remedies. Nothing in this Deed of Trust shall be construed as prohibiting Lender from seeking a judicial judgment against the Trustor to the extent such action is permitted by law. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Request for Notice.** Trustor, on behalf of Trustor and Lender, hereby requests that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust be mailed to them at the addresses set forth in the last paragraph of this Deed of Trust.

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**Attorney Fees Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may determine reasonable as attorney's fees at trial and upon any appeal. Whether or not any court action is invoked, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the rate then from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorney fees and Lender's legal expenses, whether or not there is a lawsuit, including attorney fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining the reports (including foreclosure reports), surveys, reports, and appraisal fees, the insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustee also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** Trustee shall have all of the rights and duties of Lender as set forth in this section.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustee: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting the Deed of Trust or the interest of Lender under this Deed of Trust.

**Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with one to the full extent provided by applicable law.

**Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Saffery County, State of Nebraska. The instrument shall contain, in addition to all other matters required by state law, the name of the original Lender, Trustee, and Trustee, the book and page (or computer system reference) where this Deed of Trust is recorded, and the name and address of the successor Trustee, and the instrument shall be executed and acknowledged by all the beneficiaries under this Deed of Trust or their successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by registered mail (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notice under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustee agrees to keep Lender informed of all areas of Trustee's current address. Unless otherwise provided or required by law, if there is more than one Trustee, any notice given by Lender to any Trustee is deemed to be notice given to all Trustees.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:  
**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be changed or bound by the alteration or amendment.  
**Annual Reports.** If the Property is used for purposes other than Trustee's residence, Trustee shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustee's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.  
**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by, construed and enforced in accordance with Federal law and the laws of the State of Nebraska. This Deed of Trust has been accepted by Lender in the State of Nebraska.

**Choice of Venue.** If there is a lawsuit, Trustee agrees upon Lender's request to submit to the jurisdiction of the courts of DOUGLAS County, State of Nebraska.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustee, shall constitute a waiver of any of Lender's rights or of any of Trustee's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstances, that finding shall not make the remaining provision illegal, invalid, or unenforceable as to any other circumstances. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Trustee's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustee, Lender, without notice to Trustee, may deal with Trustee's successors with reference to this Deed of Trust and the indebtedness by way of reference or extension without releasing Trustee from the obligations of the Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Trustee hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nebraska as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in legal money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings ascribed to such terms in the Uniform Commercial Code.

**Beneficiary.** The word "Beneficiary" means NEBRASKA STATE BANK OF OMAHA, and its successors and assigns.

**Borrower.** The word "Borrower" means PILLHO, L.L.C., and all other persons and entities signing this Note in whatever capacity.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Trustee, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Pleds.



2001-11650F

SCHEDULE "A"

The Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, except the Right of Way of the Chicago, Burlington and Quincy Railroad, Union Pacific Railroad, and Missouri Pacific Railroad, and public highways; further excepting that part condemned by Sanitary Improvement District No. 124 of Sarpy County, Nebraska by Return of Appraisers in Book 33 at Page 523 described as follows:

Beginning at the intersection of the South line of Section 1 with the Northeast Right-of-Way line of the Union Pacific Railroad; proceeding thence Northwesterly along the Northeast Right-of-Way line of the Union Pacific Railroad a distance of 1,040.00 feet; thence on a deflection to the right of 90° a distance of 600.00 feet; thence on a deflection to the right of 90° a distance of 300.00 feet; thence on a deflection to the right of 90° a distance of 300.00 feet; thence on a deflection to the right of 90° a distance of 560.00 feet; thence on a deflection to the left 90°, running parallel to and 40.00 feet Northeast of the Northeast Right-of-Way line of the Union Pacific Railroad a distance of 790 feet more or less to the South line of said Section 17; thence West along the south line of said Section 17, a distance of 71 feet more or less to the point of beginning; FURTHER EXCEPTING that tract of land in the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, lying North of the C.B.&Q. Railroad Right-of-Way, described as follows: Commencing at the East Quarter Corner of said Section 17, thence South 00°14'20" East for a distance of 394.94 feet to the Point of Beginning; thence continuing South 00°14'20" East for a distance of 49.68 feet to a point on the northerly right-of-way line of the C.B.&Q. Railroad; thence North 61°52'00" West for a distance of 158.19 feet along the northerly Right-of-Way line of said C.B.&Q. Railroad to a point of curve; thence along the northerly curved right-of-way line of C.B.&Q. Railroad on a curve to the left an arc length of 581.50 feet to a point; thence North 60°22'00" West for a distance of 300.01 feet to a point on the north line of said Southeast Quarter; thence North 90°00'00" East along said north line of said Southeast Quarter for a distance of 303.37 feet to a point; thence South 60°22'00" East for a distance of 151.07 feet to a point of curve; thence along a curve to the right, an arc length of 251.33 feet to a point of tangent; thence South 56°41'50" East for a distance of 344.14 feet to the point of beginning; FURTHER EXCEPTING those tracts of land in the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., described as follows: Beginning at the East Quarter Corner of said Section 17, thence South 00°14'20" East for a distance of 394.94 feet to a point on the east line of said Southeast Quarter; thence North 56°41'50" West for a distance of 344.14 feet to a point of curve; thence along a curve to the left, an arc length of 251.23 feet to a point of tangent; thence North 60°22'00" West for a distance of 151.07 feet to a point on the north line of said Southeast Quarter; thence North 90°00'00" East along said north line of said Southeast Quarter for a distance of 631.60 feet to the Point of Beginning; and Beginning at the center of Section 17, Township 14 North, Range 12 East, thence North 90°00'00" East for a distance of 1717.55 feet to a point; thence South 60°22'00" East for a distance of 300.01 feet to a point on the North Right-of-Way line of the C.B.&Q. Railroad; thence along the northerly curved Right-of-Way line of said C.B.&Q. Railroad on a curve to the left, an arc length of 419.27 feet to a point of compound curvature, thence continuing on a curve to the left, an arc length of 1601.63 feet to a point; thence North 00°07'15" West for a distance of 754.11 feet to the point of beginning; FURTHER EXCEPTING that part of the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, lying South of the Right-of-Way of Union Pacific Railroad; and FURTHER EXCEPTING a tract of land located in part of tax lot 1A1A in the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Beginning at the Southeast Corner of said quarter section; thence South 87°30'46" West, a distance of 334.51 feet along the south line of said quarter section; thence North 56°21'35" West, a distance of 513.30 feet; thence North 33°38'25" East, a distance of 10.00 feet; thence South 65°11'31" East, a distance of 241.42 feet; thence North 87°30'46" East, a distance of 200.00 feet; thence South 02°29'14" East, a distance of 75.00 feet; thence North 87°30'46" East, a distance of 150.00 feet; thence North 42°30'46" East, a distance of 106.7 feet; thence North 01°41'37" East, a distance of 300.51 feet; thence North 14°00'37" East, a distance of 104.40 feet; thence North 87°15'40" East, a distance of 50.00 feet to a point on the east line of said quarter section; thence South 02°41'20" East, a distance of 600.00 feet along the east line of said Quarter

2001-11650G

Section to the point of beginning; ALL TOGETHER with that portion of the Southwest Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska; lying South of the C.B. & Q. Railroad Right-of-Way and East of the Union Pacific Railroad Right-of-Way, also known as Tax Lot 2B2.

All of the above except that part of the Southeast Quarter of the Southeast Quarter of Section 17, Township 14 North; Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Commencing at the Southeast corner of said Southeast Quarter; thence South 87°30'46" West (assumed bearing) 335.70 feet to the south line of said Southeast Quarter to the Southeast corner of Tax Lot 1B; thence North 56°24'58" West 513.41 feet on the northeasterly line of said Tax Lot 1B to the point of beginning said point being on the north line of Gilles Road; thence continuing North 56°24'58" West, 281.04 feet on the northeasterly line of said Tax Lot 1B; thence North 33°35'02" East, 568.04 feet on the southeasterly line of said Tax Lot 1B to the most easterly corner thereof; thence South 56°24'58" East, 147.76 feet on the southeasterly extension of the northeasterly line of said Tax Lot 1B; thence South 02°29'14" East 633.43 feet to the north line of Gilles Road; thence North 65°26'05" West 242.68 feet on the north line of Gilles Road; thence South 33°35'02" West 10.00 feet on the north line of Gilles Road to the point of beginning;

EXCEPT Lots 34 through 46 inclusive, and Outlot A of Brook Valley Business Park, a Subdivision in Sarpy County, Nebraska



FILED SARPY CO. NE.  
 INSTRUMENT NUMBER  
 2000 - 33986  
 2000 DE 22 PM 3:16  
 REGISTER OF DEEDS  
 Counter AW  
 Verify W  
 D.E. S  
 Proof S  
 Fee \$ 17.00  
 CK  Cash  Chg   
 3424

FIRST AMENDMENT TO DEED OF TRUST

THIS FIRST AMENDMENT is made and entered into this 24<sup>th</sup> day of December, 2000, by and between Brook Valley Limited Partnership, 6410 South 120<sup>th</sup> Plaza, Omaha, NE 68137 ("Trustor"), and Nebraska State Bank, 3211 North 90<sup>th</sup> Street, Omaha, Nebraska 68134 (referred to herein either as "Lender" or "Beneficiary") and Nebraska State Bank ("Trustee").

WITNESSETH

WHEREAS, on or about October 28, 2000, Trustor executed and delivered to Beneficiary and Trustee a Deed of Trust (the "Deed of Trust") upon certain real property and improvements thereon legally described herein, (hereinafter the "Real Property"), which Deed of Trust was recorded in the office of the Register of Deeds of Sarpy County, Nebraska, as Instrument No. 2000-27634 of Mortgage Records; and

WHEREAS, such Deed of Trust was given to secure, among other obligations, indebtedness of Prime Realty, Inc. to Beneficiary under a certain promissory note, dated October 25, 2000, in the original principal sum of \$2,721,328.47, including all renewals, extensions, modifications, refinancing and substitutions for the note, (hereinafter the "Note");

WHEREAS, the parties wish to amend the Deed of Trust as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Certain definitions as set forth in the Deed of Trust are hereby amended and restated as follows:

**Borrower.** The word "Borrower" means Prime Realty, Inc. and all other persons and entities signing the Note in whatever capacity.

**Note.** The word "Note" means the Promissory Note dated October 25, 2000, in the original principal amount of \$2,721,328.47 from Borrower

33986

2000 - 33986A

to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the Promissory Note or Agreement.

2. The description of Real Property as set forth in the Deed of Trust is hereby amended and restated as follows:

Lot 43, except the Northwesternly 150 feet in width and Lot 44, except the Southeasterly 150 feet in width, and all of Outlot A, Brook Valley Business Park, as surveyed, platted and recorded in Sarpy County, Nebraska AND Tax Lot 1A1A1A in the East Half of the Southeast Quarter and Tax Lot 2B2 in the Northeast Quarter of the Southwest Quarter, South of the Chicago Burlington and Quincy Railroad and Northeast of the Union Pacific Railroad both located in Section ~~X~~ 17 BP Township 14 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska.

3. Trustor hereby acknowledges, represents and confirms unto Beneficiary that (a) it does not now have and at no prior time had any defenses (including without limitation, the defense of usuary), claims, counterclaims, cross-actions or equities, or rights of rescission, set off, abatement, or diminution, with respect to the Note, its Guaranty of the Note, the Deed of Trust or any other loan documents executed in connection therewith; and (b) the Deed of Trust, this First Amendment, the Note, the Guaranty and all other loan documents executed in connection therewith are valid, binding and free from any infirmity of any nature whatsoever, and are enforceable in accordance with their respective terms.

4. Except as specifically amended herein, the Deed of Trust shall remain in full force and effect as originally executed.

5. This First Amendment shall be binding on the successors and assigns of the parties hereto.

2000-35986B

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and date first above written.

Brook Valley Limited Partnership, A Nebraska Limited Partnership

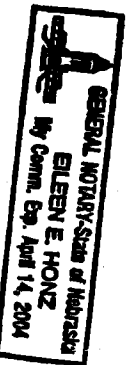
By: James V. McCart  
James V. McCart, President of Prime Realty, Inc., A Nebraska Corporation, General Partner Of Brook Valley Limited Partnership, A Nebraska Limited Partnership

NEBRASKA STATE BANK, Beneficiary and Trustee

By: Walter Meyers  
Its: Executive Vice-President

STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of December, 2000, by James V. McCart, President of Prime Realty, Inc., A Nebraska Corporation, General Partner of Brook Valley Limited Partnership, A Nebraska Limited Partnership.



Notary Public Eileen E. Honz  
My commission expires: 4/14/2004

STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of December, 2000, by Walter Meyers the Executive Vice-President, of Nebraska State Bank, a Nebraska banking corporation, on behalf of the corporation.



Notary Public Eileen E. Honz  
My commission expires: 4/14/2004

NEBRASKA STATE BANK  
3211 North 90 Street  
Omaha, NE 68134



RECORDED NOTE  
check  
metes & bounds

FILED SARPV CO. NE.  
INSTRUMENT NUMBER  
2001-12445-0  
2601 APR 27 P 3:20 PM

REGISTER OF DEEDS

2001-12445-0  
Counter DD  
Verify AP  
D.E. 201  
Proof 02  
Fee \$ 10.50  
Cash  Chg   
3816

WHEN RECORDED MAIL TO:

NEBRASKA STATE BANK OF OMAHA  
2711 N 90TH STREET  
OMAHA, NE 68134

RE-RECORDED TO CORRECT LEGAL DESCRIPTION

FOR RECORDER'S USE ONLY

DEED OF TRUST

MAXIMUM LIEN. The lien of this Deed of Trust shall not exceed at any one time \$744,000.00.

THIS DEED OF TRUST is dated April 19, 2001, among PRIMO, L.L.C., A NEBRASKA LIMITED LIABILITY COMPANY, whose address is 2120 SOUTH 72ND STREET, SUITE 1200, OMAHA, NE 68124 ("Trustor"); NEBRASKA STATE BANK OF OMAHA, whose address is 2711 N 90TH STREET, OMAHA, NE 68134 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Nebraska State Bank of Omaha, whose address is 2711 N. 90TH ST., OMAHA, NE 68134 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor conveys to Trustee in trust, WITH POWER OF SALE, for the benefit of Lender, as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently encumbered or affixed buildings, improvements and fixtures, all easements, rights of way, and appurtenances, of what, whether rights and ditch rights (including stock in utility with ditch or irrigation rights), and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, petroleum and similar matters, (the "Real Property") located in Sarpy County, State of Nebraska:

See SCHEDULE "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as OMAHA, NE 68138.

Trustor hereby assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future taxes of the Property and all items from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Funds.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE OBLIGATIONS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall safely and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) gather the Rents from the Property.

Buy to Maintain. Trustor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Law, (b) any use, generation, treatment, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor Trustor's Subsidiaries on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation of Environmental Law. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with the section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such law; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of the Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Release, Waiver. Trustor shall not cause, conduct or permit any nuisance nor cause, permit, or suffer any stopping or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any fence, minerals (including oil and gas), coal, clay, sand, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed

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DEED OF TRUST  
(Continued)

2001-12-14/5 P.  
2001-11-50A  
TOM REARDOSE Page 2

of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contract in good faith with any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon nor leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Condemn. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorney's fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any event, Trustor shall defend said lien and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the context proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Liens of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Trustor will upon request of Lender furnish to Lender advance statements satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Trustor shall procure and maintain policies of the insurance with standard extended coverage endorsements on a like value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any contribution clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may require with trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurances, including but not limited to hazard, business interruption, and boiler insurances, as Lender may reasonably require. Policies shall be written in term, amount, coverage and basic reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender. Including obligations that coverage will not be cancelled or discontinued without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impeded in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the 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 Lender, and to maintain such insurances for the term of the loan.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditures, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under the Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used that to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds other payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance that turns to the benefit of, and passes to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the property.

LENDER'S EXEMPTIONS. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Document, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Document, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims; at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date treated or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be secured as provided herein; and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

TRUSTOR WARRANTS THAT: (a) Trustor holds good and marketable title of record to the Property in the simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any file insurance policy, this report, or find this option listed in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

DEFENSE OF TITLE. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustor or Lender under this Deed of Trust, Trustor shall defend the action of Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

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Compliance With Laws. Trustee warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in the Deed of Trust shall survive the execution and delivery of the Deed of Trust; shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's Indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor may be the named party in such proceedings, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney's fees incurred by Trustor or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to the Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing the Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering the Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon the type of Deed of Trust or upon all or any part of the Indebtedness secured by the Deed of Trust; (2) a specific tax on Trustor when Trustor is authorized or required to deduct from payments on the Indebtedness secured by the type of Deed of Trust; (3) a tax on the type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Trustor.

**SECURITY AGREEMENT; FURNISHING STATEMENTS.** The following provisions relating to the Deed of Trust as a security agreement are a part of the Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording the Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file annotated counterparts, copies or reproductions of the Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in recording or continuing the security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not added to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addressess. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by the Deed of Trust may be obtained (such as required by the Uniform Commercial Code) are as stated on the first page of the Deed of Trust.

**PARTNER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of the Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designees, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such places and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to establish, complete, perfect, continue, or preserve (1) Trustor's obligations under the Note, the Deed of Trust, and the Related Documents; and (2) the liens and security interests created by the Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Trustor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under the Deed of Trust, Lender shall execute and deliver to Trustor a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on the underlying Lender's security interest in the Real and the Personal Property. Any reconveyance so required by law shall be paid by Trustor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Trustor fails to make any payment when due under the Indebtedness.

Other Defaults. Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in the Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Trustor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in the Deed of Trust, the Note or in any of the Related Documents. If such a failure is curable and if Trustor has not been given a notice of a breach of the same provision of the Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure, (a) cures the failure within twenty (20) days; or (b) if the cure requires more than twenty (20) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

Default on Other Payments. Failure of Trustor within the time required by the Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any tax.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under the Deed of Trust, the Note, or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Selective Cancellation. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Trustor's (regardless of whether section is continue to read), any member withdraws from the

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limited liability company, or any other limitation of Trustor's existence as a going business or the death of any member, the incapacity of Trustor, the appointment of a successor for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

**Creditor or Perishable Proceedings.** Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the indebtedness, or any other repossession or any other method, by any creditor of Trustor's account, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Trustor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender a money order or a surety bond for the greater or lesser proceeds, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Branch or Other Agreement.** Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided herein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtednesses or any obligation of Trustor to Lender, or becomes insolvent, or merges or acquires the validity of, or liability under, any Guaranty of the indebtedness of a debt, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Right to Cure.** If such a failure to curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust as set forth herein, it may be cured (and no Event of Default will have occurred) if Trustor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within twenty (20) days; or (b) if the cure requires more than twenty (20) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustor or Lender may exercise any one or more of the following rights and remedies:

- (a) Acceleration Upon Default: Additional Remedies. If any Event of Default occurs as per the terms of the Note secured hereby, Lender may declare all indebtedness secured by this Deed of Trust to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Lender may:
  - (i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of the security, enter upon and take possession of the Property or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or realizable value of the Property; or part of the Property or interest in the Property; increase the income from the Property or protect the security of the Property; and, with or without taking possession of the Property, sue for or otherwise collect the rent, issues and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection attorney's fees, to any indebtedness secured by this Deed of Trust, all in such order as Lender may determine. The entering upon and taking possession of the Property, the collection of such rent, issues and profits, and the application thereof shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done in response to such default or pursuant to such notice of default; and, notwithstanding the signature in possession of the Property or the collection, receipt and application of rent, issues or profits, Trustor or Lender shall be entitled to exercise every right provided for in the Note or the Related Documents or by law upon the occurrence of any event of default, including the right to exercise the power of sale;
  - (ii) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver or specifically enforce any of the covenants hereof; and
  - (iii) Deliver to Trustor a written declaration of default and demand for sale and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustor shall cause to be duly filed for record in the appropriate offices of the County in which the Property is located; and
  - (iv) With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Indiana Uniform Commercial Code.
- (b) Foreclosure by Power of Sale. If Lender elects to foreclose by exercise of the Power of Sale herein contained, Lender shall notify Trustor and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and received by the Deed of Trust as Trustee may require.
- (c) Upon receipt of such notice from Lender, Trustor shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, enter upon and take possession of the Property at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in such parts as may then be required by law and other restrictions of such Notice of Default and other Notice of Sale having been given as required by law, and the Property at the time and place of sale, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustor shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The results in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation Trustor, Trustee, or Lender, may purchase at such sale.
- (d) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of the Trust, including costs of evidence of this in connection with sale, Trustor shall apply the proceeds of sale to payment of (i) all sums expended under the terms of this Deed of Trust or under the terms of the Note not then repaid, including but not limited to accrued interest and late charges, (ii) all other sums then secured hereby, and (iii) the remainder, if any, to the person or persons legally entitled thereto.
- (e) Trustor may, in the manner provided by law postpone sale of all or any portion of the Property.

**Remedies Not Exhaustive.** Trustee and Lender, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured by this Deed of Trust and to exercise all rights and powers under the Deed of Trust, under the Note and under any of the Related Documents, or under any other agreement or any laws now or hereafter in force, notwithstanding, some or all of such indebtedness and obligations secured by this Deed of Trust may now or hereafter be otherwise secured, whether by mortgage, deed or trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor the enforcement, whether by court action or pursuant to the power of sale or other process contemplated in this Deed of Trust, shall prejudice or in any manner affect Trustor's or Lender's right to realize upon or enforce any other security now or hereafter held by Trustor or Lender, or Trustor's or Lender's right to realize upon or enforce this Deed of Trust and any other security now or hereafter held by Lender or Trustor in such order and manner as they or either of them may in their absolute discretion determine. No remedy contemplated upon or reserved to Trustor or Lender shall be in addition to the exclusivity of any other remedy given in this Deed of Trust or by law provided or permitted, but each shall be enforceable and shall be in addition to any other remedy given in the Deed of Trust or by Lender or by which either of them may be otherwise empowered or remedied given by the Note or any of the Related Documents to Trustor or Lender or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustor or Lender and other of them may pursue independent remedies. Nothing in this Deed of Trust shall be construed as prohibiting Lender from seeking a declaratory judgment against the Trustor, or the estate of Trustor, or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to exercise a default and exercise its remedies. Request for Notice. Trustor, on behalf of Trustor and Lender, hereby requests that a copy of any Notice of Default and a copy of any Notice of Sale under this Deed of Trust be mailed to them at the addresses set forth in the last paragraph of this Deed of Trust.



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Attorney's Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorney's fees at the end upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the rate then in effect on the date of the expenditure until repaid. Expenses covered by the paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorney's fees and Lender's legal expenses, whether or not there is a lawsuit, including attorney's fees and expenses for bargaining proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining the reports (including foreclosure reports), surveyor's reports, and appraisal fees, fire insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustee also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of the Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustee: (a) join in preparing and filing a map or plat of the Trust Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Trust Property; and (c) join in any subdivision or other agreement affecting the Deed of Trust or the interest of Lender under the Deed of Trust.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under the Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Deeds of Sully County, State of Nebraska. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustee, the book and page (or computer system reference) where the Deed of Trust is recorded, and the name and address of the successor Trustee, and the instrument shall be executed and acknowledged by all the beneficiaries under the Deed of Trust or their successors in interest. The successor Trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in the Deed of Trust and by applicable law. The procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Any notice required to be given under the Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by individuals (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of the Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over the Deed of Trust shall be sent to Lender's address, as shown near the beginning of the Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustee agrees to keep Lender informed at all times of Trustee's current address. Unless otherwise provided or required by law, if there is more than one Trustee, any notice given by Lender to any Trustee is deemed to be notice given to all Trustees.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of the Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be changed or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Trustee's residence, Trustee shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustee's previous fiscal year in such form and detail as Lender shall require. That operating income shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Survivor. There shall be no merger of the interest or estate created by the Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by, construed and enforced in accordance with federal law and the laws of the State of Nebraska. This Deed of Trust has been accepted by Lender in the State of Nebraska.

Choice of Venue. If there is a lawsuit, Trustee agrees upon Lender's request to submit to the jurisdiction of the courts of DOUGLAS County, State of Nebraska.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not preclude or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustee, shall constitute a waiver of any of Lender's rights or of any of Trustee's obligations as to any future breaches. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of the Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the remaining provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from the Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of the Deed of Trust shall not affect the legality, validity or enforceability of any other provision of the Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Trustee's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustee, Lender, without notice to Trustee, may deal with Trustee's successors with reference to this Deed of Trust and the indebtedness by way of foreclosure or extension without releasing Trustee from the obligations of this Deed of Trust or liability under the indebtedness.

This is of the Essence. This is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Trustee hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nebraska as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in the Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code.

Beneficiary. The word "Beneficiary" means NEBRASKA STATE BANK OF OMAHA, and its successors and assigns.

Borrower. The word "Borrower" means PRMO, L.L.C., and all other persons and entities signing the Note in whatever capacity.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustee, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Pawns.

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2001-11-50 E

Default. The word "Default" means the Default set forth in the Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-483 (SARA), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal law, rule, or regulation adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in the Deed of Trust in the events of default section of this Deed of Trust.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, stored, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes situate on the Real Property, fixtures, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustee's obligations or expenses incurred by Trustee or Lender to enforce Trustee's obligations under the Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Leader. The word "Leader" means NERYSKA STATE BANK OF OMAHA, its successors and assigns.

Note. The word "Note" means the promissory note dated April 19, 2001, in the original principal amount of \$1,285,643.40 from Trustee to Lender, together with all renewals of, extensions of, modifications of, consolidations of, and substitutions for the promissory note or agreement.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustee, and now or hereafter attached or affixed to the Real Property, together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property, and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in the Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of Trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rules. The word "Rules" means all present and future rules, revenues, income, taxes, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means PRIMO, L.L.C.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.  
TRUSTOR:

PRIMO, L.L.C.  
By: Robert J. Nock, Member  
ROBERT J. NOCK, Member of PRIMO, L.L.C.

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this 19 day of April, 2001, before me, the undersigned Notary Public, personally appeared ROBERT J. NOCK, Member of PRIMO, L.L.C., and known to me to be partner or designated agent of the limited liability company, that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, the articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute the Deed of Trust and in had executed the Deed of Trust of said limited liability company.



By: Robert J. Nock  
Notary Public in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

2005-12-005 G

EXHIBIT "A"

The Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, except the Right of Way of the Chicago, Burlington and Quincy Railroad, Union Pacific Railroad, and Missouri Pacific Railroad, and public highways; further excepting that part condemned by Sanitary Improvement District No. 124 of Sarpy County, Nebraska by Return of Appraisers in Book 33 at Page 523 described as follows:

Beginning at the intersection of the South line of Section 1 with the Northeast Right-of-Way line of the Union Pacific Railroad; proceeding thence Northwesterly along the Northeast Right-of-Way line of the Union Pacific Railroad a distance of 1,040.00 feet; thence on a deflection to the right of 90° a distance of 600.00 feet; thence on a deflection to the right of 90° a distance of 300.00 feet; thence on a deflection to the right of 90° a distance of 560.00 feet; thence on a deflection to the left 90°, running parallel to and 40.00 feet Northeast of the Northeast Right-of-Way line of the Union Pacific Railroad a distance of 790 feet more or less to the South line of said Section 17; thence West along the south line of said Section 17, a distance of 71 feet more or less to the point of beginning; FURTHER EXCEPTING that tract of land in the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, lying North of the C.B.&Q. Railroad Right-of-Way, described as follows: Commencing at the East Quarter Corner of said Section 17, thence South 00°14'20" East for a distance of 394.94 feet to the Point of Beginning; thence continuing South 00°14'20" East for a distance of 49.68 feet to a point on the northerly right-of-way line of the C.B.&Q. Railroad; thence North 61°52'00" West for a distance of 158.19 feet along the northerly Right-of-Way line of said C.B.&Q. Railroad to a point of curve; thence along the northerly curved right-of-way line of C.B.&Q. Railroad on a curve to the left an arc length of 581.50 feet to a point; thence North 60°22'00" West for a distance of 300.01 feet to a point on the north line of said Southeast Quarter; thence North 90°00'00" East along said north line of said Southeast Quarter for a distance of 303.37 feet to a point; thence South 60°22'00" East for a distance of 151.07 feet to a point of curve; thence along a curve to the right, an arc length of 251.33 feet to a point of tangent; thence South 56°41'50" East for a distance of 344.14 feet to the point of beginning; FURTHER EXCEPTING those tracts of land in the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., described as follows: Beginning at the East Quarter Corner of said Section 17, thence South 00°14'20" East for a distance of 394.94 feet to a point on the east line of said Southeast Quarter; thence North 56°41'50" West for a distance of 344.14 feet to a point of curve; thence along a curve to the left, an arc length of 751.23 feet to a point of tangent; thence North 60°22'00" West for a distance of 151.07 feet to a point on the north line of said Southeast Quarter; thence North 90°00'00" East along said north line of said Southeast Quarter for a distance of 631.60 feet to the Point of Beginning; and Beginning at the center of Section 17, Township 14 North, Range 12 East, thence North 90°00'00" East for a distance of 1717.55 feet to a point; thence South 60°22'00" East for a distance of 300.01 feet to a point on the North Right-of-Way line of the C.B.&Q. Railroad; thence along the northerly curved Right-of-Way line of said C.B.&Q. Railroad on a curve to the left, an arc length of 419.27 feet to a point of compound curvature, thence continuing on a curve to the left, an arc length of 1601.63 feet to a point; thence North 00°07'15" West for a distance of 254.11 feet to the point of beginning; FURTHER EXCEPTING that part of the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, lying South of the Right-of-Way of Union Pacific Railroad; and FURTHER EXCEPTING a tract of land located in part of tax lot 1A11A in the Southeast Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Beginning at the Southeast Corner of said quarter section; thence South 87°30'46" West, a distance of 513.30 feet; thence North 33°36'25" East, a distance of 10.00 feet; thence South 65°11'31" East, a distance of 241.42 feet; thence North 87°30'46" East, a distance of 200.00 feet; thence South 02°29'14" East, a distance of 75.00 feet; thence North 87°30'46" East, a distance of 150.00 feet; thence North 42°30'46" East, a distance of 106.7 feet; thence North 01°41'37" East, a distance of 300.51 feet; thence North 14°00'37" East, a distance of 104.40 feet; thence North 87°18'40" East, a distance of 50.00 feet to a point on the east line of said quarter section; thence South 02°41'20" East, a distance of 600.00 feet along the east line of said Quarter Section to the point of beginning; ALL TOGETHER with that portion of the Southwest Quarter of Section 17, Township 14 North, Range 12 East of the 6th P.M.,

2001-12445 H

Sarpy County, Nebraska; lying South of the C.B.&Q. Railroad Right-of-Way and East of the Union Pacific Railroad Right-of-Way, also known as Tax Lot 21B2.

All of the above except that part of the Southeast Quarter of the Southeast Quarter of Section 17, Township 14 North; Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Commencing at the Southeast corner of said Southeast Quarter; thence South  $87^{\circ}30'46''$  West (assumed bearing) 335.70 feet on the south line of said Southeast Quarter to the Southeast corner of Tax Lot 1B; thence North  $56^{\circ}24'58''$  West 513.41 feet on the northeasterly line of said Tax Lot 1B to the point of beginning said point being on the north line of Giles Road; thence continuing North  $56^{\circ}24'58''$  West, 281.04 feet on the northeasterly line of said Tax Lot 1B; thence North  $33^{\circ}35'02''$  East, 560.04 feet on the southeasterly line of said Tax Lot 1B to the most easterly corner thereof; thence South  $56^{\circ}24'58''$  East, 147.76 feet on the southeasterly extension of the northeasterly line of said Tax Lot 1B; thence South  $02^{\circ}29'14''$  East 633.43 feet to the north line of Giles Road; thence North  $65^{\circ}26'05''$  West 242.68 feet on the north line of Giles Road; thence South  $33^{\circ}35'02''$  West 10.00 feet on the north line of Giles Road to the point of beginning;

EXCEPT Lots 34 through 46 inclusive, and Outlot A of Break Valley Business Park, a Subdivision in Sarpy County, Nebraska

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2002 37021  
2002 SEP 20 11:06 AM  
REGISTERED OF RECORDS

Counter AK  
Verify AK  
D.E. AK  
Proof AK  
Fee \$ 8.80  
Cash  Chg   
1872

(Space Above This Line for Recording Data)

**REQUEST FOR DEED OF RECONVEYANCE**

This is to certify that the debt secured by ~~the~~ the ~~deed~~ of Trust identified below has been paid and the below named Trustee is requesting to execute this Deed of Reconveyance.

STATE OF NEBRASKA )  
SS )  
COUNTY SARPY )

Bank of Nebraska  
By: [Signature]  
Title: Vice President

The foregoing instrument was acknowledged before me this 10th day of September 2002 by Claude W. Sears, Vice President (Name of Officer & Title) of Bank of Nebraska, a Nebraska Corporation, on behalf of the corporation.



[Signature]  
Notary Public

**DEED OF RECONVEYANCE**

WHEREAS, all of the indebtedness secured by the Deed of Trust executed by BROOK VALLEY LIMITED PARTNERSHIP, as Trustor to Bank of Nebraska as Trustee for the benefit of Bank of Nebraska the beneficiary named therein, dated NOVEMBER 4, 1997 ~~xxxxxx~~, and recorded in the office of the Register of Deeds in SARPY County, Nebraska, in Book                      Page                      or instrument Number 97-025361 has been paid; and

WHEREAS, the Beneficiary under said Deed of Trust has requested that the property held by the Trustee be reconveyed, without warranty, to the person or persons entitled thereto.

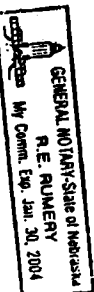
NOW THEREFORE, in consideration of such payment and in accordance with the written request of the Beneficiary named herein, the undersigned, as Trustee, does hereby grant without warranty, to the person or persons entitled thereto all the estate and interest held by it, as Trustee, under the above described Deed of Trust in the following described property:

LOT 35, 42, THE SOUTHEASTERLY 150 FEET OF LOT 43, THE NORTHWESTERLY 150 FEET OF LOT 44, 45, 46, BROOK VALLEY BUSINESS PARK, A SUBDIVISION IN SARPY COUNTY, NEBRASKA

Dated: September 10, 2002  
STATE OF NEBRASKA )  
SS )  
COUNTY OF SARPY )

Bank of Nebraska  
By: [Signature]  
Title: Vice President  
Trustee

The foregoing instrument was acknowledged before me this 10th day of September, 2002 by Claude W. Sears, Vice President (Name of Officer & Title) of Bank of Nebraska, a Nebraska corporation, on behalf of the corporation.



[Signature]  
Notary Public

37021

W, JAN 5/1912

FILED SAPPY CO. NE.  
INSTRUMENT NUMBER  
2002-21116  
2002 JUN -6 P 12:44 8

Counter DW  
Verify DW  
D.E. DW  
Proof DW  
Fee \$ 15.50  
CK  Cash  Chg  DOR

*George J. D. Dorr*  
REGISTER OF DEEDS

DEED OF PARTIAL RECONVEYANCE - Corporation (page 1)  
PROJECT: STPN-77(37) C.N.: 21860 TRACT: 9

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, part of the indebtedness secured by the Trust Deed executed by Brook Valley Limited Partnership to Nebraska State Bank as Trustee for the benefit of Nebraska State Bank the Beneficiary named therein, dated December 22, 2000 and recorded in the office of the Register of Deeds of SARPY County, Nebraska, Instrument Number 2000-33986 has been paid, and said Beneficiary has requested in writing that this deed of reconveyance be executed and delivered as confirmed by its endorsement below:

NOW THEREFORE, in consideration of such payment and in accordance with the request of the Beneficiary named therein, the undersigned as Trustee does by these presents, grant, remise, release and reconvey to the person or persons entitled thereto all the interest and estate derived to said Trustee by or through said Trust Deed in the following described premises but only as to such premises:

A PART OF LOT 43, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, A SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE SIXTH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 17; THENCE NORTH 00 DEGREES 33 MINUTES 40 SECONDS WEST (ASSUMED BEARING), ALONG THE EAST LINE OF SAID SECTION 17, A DISTANCE OF 615.370 METERS (2018.93 FEET); THENCE SOUTH 89 DEGREES 26 MINUTES 20 SECONDS WEST, A DISTANCE OF 95.266 METERS (312.55 FEET) TO A POINT ON THE EASTERLY LINE OF SAID LOT 43, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, SAID LINE ALSO BEING THE WESTERLY LINE OF LOT 42, SAID BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 05 DEGREES 29 MINUTES 24 SECONDS WEST, A DISTANCE OF 7.827 METERS (25.68 FEET); THENCE NORTH 28 DEGREES 52 MINUTES 50 SECONDS EAST, A DISTANCE OF 42.191 METERS (138.42 FEET); THENCE NORTH 07 DEGREES 21 MINUTES 39 SECONDS EAST, A DISTANCE OF 14.744 METERS (48.37 FEET), TO A POINT ON THE NORTHERLY LINE OF SAID LOT 43, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE SOUTH 62 DEGREES 54 MINUTES 37 SECONDS EAST ALONG SAID NORTHERLY LINE OF LOT 43, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD, A DISTANCE OF

*RH* Return to: Daryl Behrends  
Neb. Dept. of Roads-R.O.W. Div.  
1500 Hwy. 2, Box 94759  
Lincoln, NE 68509-4759  
21116

2002-21164

DEED OF PARTIAL RECONVEYANCE -- Corporation (page 2)  
PROJECT: STPN-77(37) C.N.: 21860 TRACT: 9

17.349 METERS (56.92 FEET) TO THE NORTHEAST CORNER OF SAID LOT 43, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID LOT 42, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A; THENCE SOUTH 35 DEGREES 41 MINUTES 28 SECONDS WEST ALONG SAID EASTERLY LINE OF LOT 43, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 42, BROOK VALLEY BUSINESS PARK, LOTS 34 THRU 46, INCLUSIVE AND OUTLOT A, A DISTANCE OF 63.358 METERS (207.87 FEET), TO THE POINT OF BEGINNING.


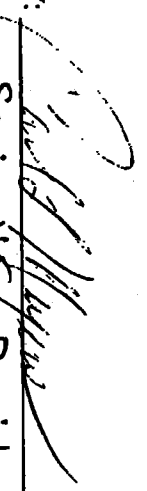
THE ABOVE DESCRIBED TRACT OF LAND CONTAINS AN AREA OF 535.403 SQUARE METERS (5763.01 SQUARE FEET), MORE OR LESS.

SAID GRANTOR DOES HEREBY RETAIN AND RESERVE TO SAID GRANTOR AND TO HIS, HER OR THEIR HEIRS, SUCCESSORS AND ASSIGNS ALL RIGHTS TO MINERALS, IN OR ON THE ABOVE DESCRIBED REAL PROPERTY. SAID GRANTOR AND/OR HIS, HER OR THEIR HEIRS, SUCCESSORS AND ASSIGNS SHALL HAVE NO RIGHT TO ENTER OR USE THE SURFACE OF SAID REAL PROPERTY FOR ANY PURPOSE CONCERNING SAID MINERAL RIGHTS, NOR SHALL SAID GRANTOR AND/OR HIS, HER OR THEIR HEIRS, SUCCESSORS AND ASSIGNS IN EXTRACTING SAID MINERALS FROM SAID REAL PROPERTY, DAMAGE OR IN ANY WAY IMPAIR THE USE OF SAID REAL PROPERTY.

Together will all buildings, fixtures, improvements, and appurtenances belonging to such premises.

Duly executed this 13<sup>th</sup> day of May, A.D. 2002.

**NEBRASKA STATE BANK**  
Corporation

ATTEST:  President  
BY:  Senior Vice President

2002-2116E

DEED OF PARTIAL RECONVEYANCE - Corporation (page 3)  
PROJECT: STPN-77(37) C.N.: 21860 TRACT: 9

STATE OF Nebraska )  
Douglas ) ss.  
County)

On this 13<sup>th</sup> day of May, A.D., 2002, before me, a General Notary Public, duly commissioned and qualified, personally came Carl L. Meyers, Senior Vice President, the duly authorized representatives of Nebraska State Bank

who acknowledged that he, she or they held the position or title set forth in the instrument, that he, she or they signed the instrument on behalf of the corporation by proper authority and that the instrument was the act of the corporation and are to me known to be said duly authorized representative or representatives and the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

WITNESS my hand and notarial seal the day and year last above written



Mandy Johnson Notary Public.

My commission expires the 5<sup>th</sup> day of February, 2006.

STATE OF Nebraska )  
Douglas ) ss.  
County)

On this 13<sup>th</sup> day of May, A.D., 2002, before me, a General Notary Public, duly commissioned and qualified, personally came Wayne Kehrl, President, the duly authorized representatives of Nebraska State Bank

who acknowledged that he, she or they held the position or title set forth in the instrument, that he, she or they signed the instrument on behalf of the corporation by proper authority and that the instrument was the act of the corporation and are to me known to be said duly authorized representative or representatives and the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

WITNESS my hand and notarial seal the day and year last above written



Mandy Johnson Notary Public.

My commission expires the 5<sup>th</sup> day of February, 2006.



FILED-SARPY CO. NE.  
INSTRUMENT NUMBER  
~~MO-52160~~  
2002 DEC 13 P 3:52Z

*George J. Davis*  
REGISTER OF DEEDS

Counter *AK*  
Verify *AK*  
D.E. *SP*  
Proof \_\_\_\_\_  
Fee \$ 35.50  
Ok  Cash  Chg  *MOA*

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, (formerly Burlington Northern Railroad Company) a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for Fifteen Thousand Two Hundred Fifty and No/100 Dollars (\$15,250.00) to it paid by SARPY COUNTY, NEBRASKA, a political subdivision of the State of Nebraska, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an EASEMENT for the removal, construction, and maintenance of an overhead vehicle bridge, located at Railroad Mile Post 27.49, hereinafter called viaduct, over, upon and across the premises, situated in the City of Papillion West, Sarpy County, State of Nebraska, described as follows, to-wit:

A portion of The Burlington Northern and Santa Fe Railway Company's (formerly Chicago, Burlington and Quincy Railroad Company) right of way located in the SE¼ of Section 17, Township 14 North, Range 12 East of the 6<sup>th</sup> Principal Meridian, Sarpy County, Nebraska, being more particularly described as follows:

Commencing at the Southeast corner of said SE¼ of Section 17; thence North 00°33'40" West (assumed bearing). Along the East line of said Section 17, a distance of 635.720 meters (2085.69 feet) to a point on the Southerly right of way line of The Burlington Northern and Santa Fe Railway Company; thence North 62°14'58" West, along said Southerly right of way line of said Railway Company, a distance of 7.249 meters (23.78 feet) to the Point of Beginning; thence continuing North 62°14'58" West along said Southerly right of way line of said Railway Company, a distance of 28.164 meters (92.40 feet); thence North 62°54'37" West along said Southerly right of way line of said Railway Company, a distance of 6.826 meters (22.39 feet); thence North 01°30'37" West, a distance of 47.071 meters (154.43 feet); thence North 58°37'56" West, a distance of 34.876 meters (114.42 feet); thence North 06°14'17" East, a distance of 8.499 meters (27.88 feet) to a point on the Northerly right of way line of said Railway Company, said point also being on the Southerly line of Lot 28, Brook Valley

52160

A

Business Park (Lots 1 thru 28, inclusive), a subdivision located in the East half (E½) of said Section 17; thence South 57°00'32" East along said Northernly right of way line of said Railway Company, a distance of 79.912 meters (262.18 feet) to a point on said East line of Section 17; thence South 00°33'40" East along said East line of Section 17, a distance of 2.264 meters (7.43 feet); thence North 63°31'46" West, a distance of 8.051 meters (26.41 feet); thence South 01°30'33" East, a distance 47.708 meters (156.52 feet) to the Point of Beginning.

**RESERVING**, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said viaduct, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said viaduct purposes.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said viaduct shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.
3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said viaduct purposes.

- B
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said viaduct on said premises.
  5. If during the construction or subsequent maintenance of said viaduct, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.
  6. This instrument is granted according to the terms and conditions of that certain Viaduct Construction Agreement between the Grantor and the Grantee, signed by Grantor on May 7, 2002, and that certain Letter Agreement For Easement between the Grantor and the Grantee accepted by Grantee on August 20, 2002, and signed by Grantor on November 7<sup>th</sup>, 2002, and made subject to the terms and conditions contained therein.
  7. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.
  8. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at (800) 533-2891 (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.

9. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.

10. Grantee, in its acceptance hereof, hereby agrees to indemnify and save harmless said Grantor, from and against all lawful claims, demands, judgments, losses, costs and expenses, for injury to or death of the person or loss or damage to the property of any person or persons whomever, including the parties hereto, in any manner arising from or growing out of the acts of omissions, negligent or otherwise of Grantee, its successors, assigns, licensees and invitees or any person whomsoever, in connection with the entry upon, occupation or use of the said premises herein described, including but not limited to that of the location, construction, operation, restoration, repair, renewal, or maintenance of said viaduct upon the herein described premises or otherwise.

11. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.


12. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

**TO HAVE AND TO HOLD THE SAME**, together with all the hereditaments and appurtenances therunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.


D

IN WITNESS WHEREOF, the said THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the 15<sup>th</sup> day of November, 2002.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

By:   
D. P. Schneider  
General Director Real Estate

ATTEST:

By:   
Patricia Zbichorski  
Assistant Secretary

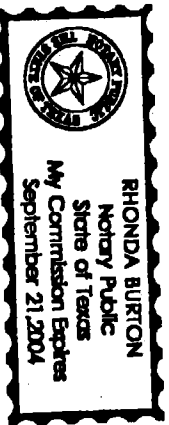


E

STATE OF TEXAS )  
 ) ss.  
COUNTY OF TARRANT )

On this 15<sup>th</sup> day of November, 2002, before me, the undersigned, a Notary Public in and for said County, personally came D. P. Schneider, General Director Real Estate of Then Burlington Northern And Santa Fe Railway Company, to me personally known to be the General Director Real Estate and the identical person whose name is affixed to the above conveyance, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that the Corporate seal of the said corporation was thereto affixed by its authority.

Witness my hand and Notarial Seal at Fort Worth in said county the day and year last above written.

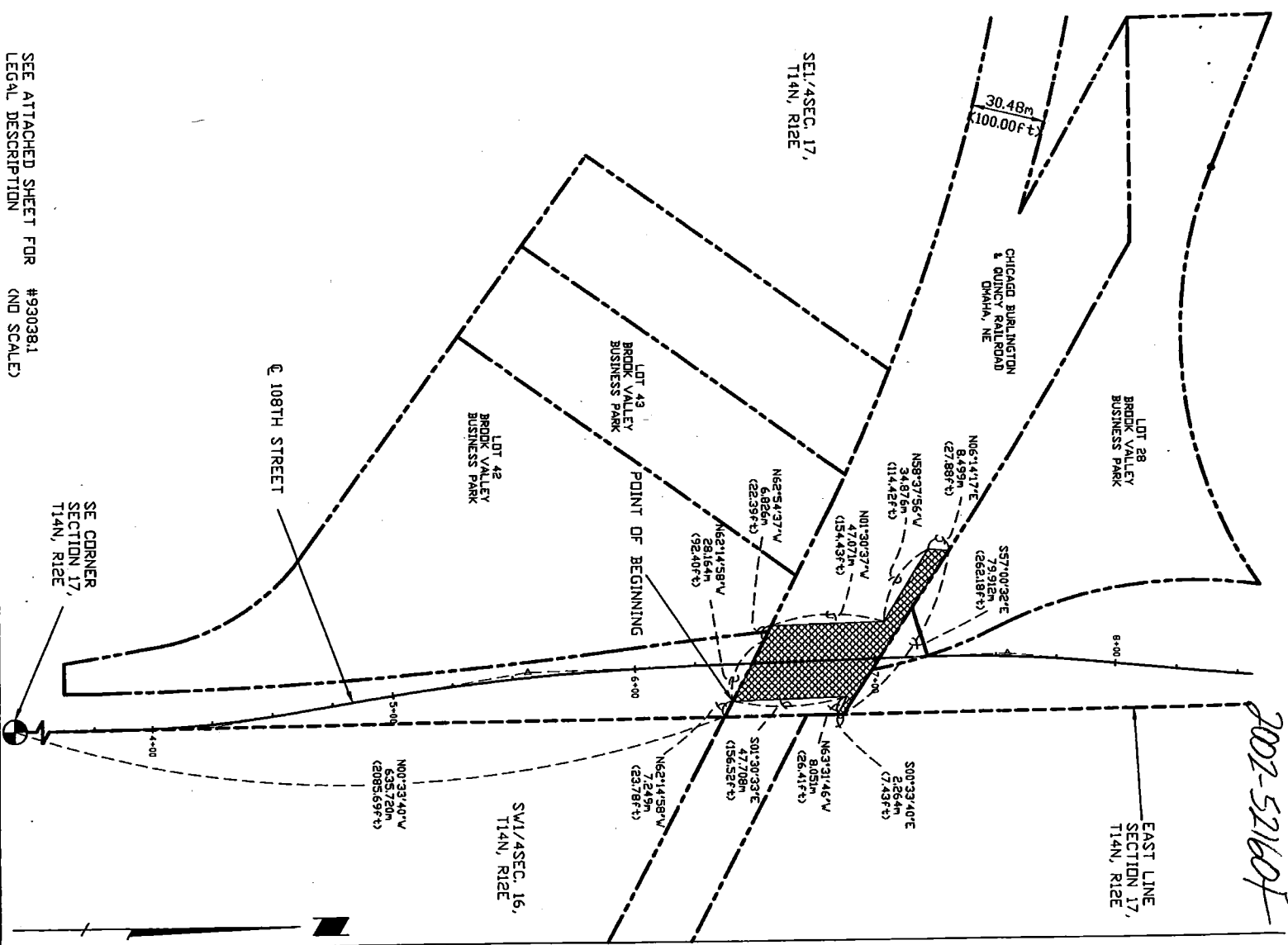


*Rhonda Burton*  
Notary Public  
My commission expires: 9/21/2004


This instrument was drafted by:  
The Staubach Company  
Title & Escrow Services  
5650 North Riverside Drive, Suite 101  
Fort Worth, Texas 76137

**FORM APPROVED BY LAW**

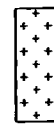
APPROVED	<input checked="" type="checkbox"/>
APPROVED	<input checked="" type="checkbox"/>
APPROVED	<input checked="" type="checkbox"/>




SEE ATTACHED SHEET FOR #93038.1  
LEGAL DESCRIPTION (AND SCALE)

NEW R.O.W. ACQUISITION  0

PERMANENT EASEMENT  1889,891 m<sup>2</sup>  
(20331,66ft<sup>2</sup>)

TEMPORARY EASEMENT  0

NEW R.O.W. 

EXISTING R.O.W. 

OWNER:  
CHICAGO BURLINGTON & QUINCY RAILROAD  
DUMAS, NE

TRACT NO. 5

EXHIBIT NO. \_\_\_\_\_

PROJECT NO. STPN-77(37), C-77(98-9)

DATE: NOVEMBER 3, 2000

LEAD AGENCY:  
SARPY COUNTY

