

FILED SARPY CO. NE.  
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*Glenn J. Gaudin*  
REGISTER OF DEEDS

COUNTER     C.E.      
VERIFY     D.E.      
PROOF      
FEES \$ 275.50  
CHECK#      
CHG SEC CASH      
REFUND     CREDIT      
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**RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL TO:**

Union Bank & Trust Company  
16934 Frances Street  
Suite 202  
Omaha, NE 68130  
Attn: Karen J. Cenovic, Senior Vice President

Above space for recorder's use.

**DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT,  
SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT**

THIS DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT ("Deed of Trust"), dated the 17<sup>th</sup> day of August, 2004, by **SOUTHPORT WEST PARTNERS LLC**, a Nebraska limited liability company, whose address is 14301 FNB Parkway, Suite 100, Omaha, NE 68154 ("Trustor"), to **UNION BANK & TRUST COMPANY**, a Nebraska state banking corporation, whose address is 16934 Frances Street, Suite 202, Omaha, Nebraska, 68130 ("Trustee") for the use and benefit of **UNION BANK & TRUST COMPANY**, a Nebraska state banking corporation, its successors and/or assigns, whose address is 16934 Frances Street, Suite 202, Omaha, Nebraska, 68130 ("Beneficiary").

**WITNESSETH:**

Trustor HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, its successors and assigns under the terms and conditions of this Deed of Trust, all of the following (collectively referred to as the "Mortgaged Property"):

(a) The real property situated in the City of La Vista, County of Sarpy, State of Nebraska, described in Exhibit A which is attached hereto and incorporated herein by

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reference (the "Land"), and all estates and rights of Trustor in and to the Land, together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the "Improvements"); and (ii) all right, title and interest of Trustor, now owned or hereafter acquired, in and to (A) all streets, roads and public places, alleys, easements, rights-of-way, public or private, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, now or hereafter used in connection with or pertaining to the Land or the Improvements; (B) any strips or gores between the Land and abutting or adjacent properties; (C) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; (D) all water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) wells and well rights, well permits, springs and spring rights and reservoirs and reservoir rights appurtenant to or historically used in connection with the and all of Trustor's rights and interests under applicable state or Federal law to all water, and to use or consent to use all water, contained in or available from any part of the water-bearing formations underlying the Land, together with all associated easements and rights-of-way, any and all rights to obtain water, sewer and other services from service districts, and water stock, timber, crops and mineral interests on or pertaining to the Land; and (E) all development rights and credits and air rights (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises");

(b) All fixtures, equipment, systems, machinery, furniture, furnishings, appliances, machinery, inventory, goods, building and construction materials, supplies, and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Trustor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories", all of which are hereby declared to be permanent accessions to the Land);

(c) All (i) plans and specifications for the Improvements, maps, surveys, studies, reports, permits, licenses, architectural, engineering, construction, management, maintenance, service and other contracts, books of account, insurance policies and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, purchase or operation of the Mortgaged Property, (ii) Trustor's rights, but not liability for any breach by Trustor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness as such term is defined below), insurance policies, interest rate protection agreements, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill and symbols) related to the Premises or the Accessories or the operation thereof, (iii) deposits and deposit accounts arising from or relating to any transactions related to the Premises or the Accessories (including Trustor's

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rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (as such term is defined below) for taxes, insurance or otherwise), (iv) rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories, (v) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (vi) all of Trustor's interest in all leases now or hereafter existing with respect to all or any portion of the Premises, all of the rents, issues and profits of the Mortgaged Property or arising from the use or enjoyment of all or any portion thereof, all security deposits arising from the use or enjoyment of all or any portion of the Mortgaged Property, and all utility deposits made to procure and maintain utility services to the Mortgaged Property, or any portion thereof and other benefits of the Premises and the Accessories (without derogation of Section A(7) hereof), (vii) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof, and (viii) engineering, accounting, title, legal, and other technical or business data concerning the Mortgaged Property, including software, which are in the possession of Trustor or in which Trustor can otherwise grant a security interest;

(d) All (i) proceeds (whether cash or non-cash and including payment intangibles), of or arising from the properties, rights, titles and interests referred to above, including the proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance, present and future, payable because of loss sustained to all or part of the Mortgaged Property (including premium refunds), whether or not such insurance policies are required by Beneficiary, proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, proceeds arising out of any damage thereto, including any and all commercial tort claims, and (ii) other interests of every kind and character which Trustor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above and all property used or useful in connection therewith, including rights of ingress and egress and remainders, reversions and reversionary rights or interests;

(e) All interests, estates or other claims or demands, in law and in equity, which the Trustor now has or may hereafter acquire in the Mortgaged Property and all right, title and interest hereafter acquired by Trustor in any greater estate in any of the foregoing; and

(f) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property referred to above.

FOR THE PURPOSE OF SECURING, in such order or priority as Beneficiary may elect (collectively, the "Secured Indebtedness"):

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(1) Payment of an indebtedness in the principal sum of Seventeen Million Five Hundred Thousand and no/100th Dollars (\$17,500,000.00), according to the terms of a certain promissory note of even date herewith made by Trustor to the order of Beneficiary, and any and all extensions, modifications, substitutions or renewals thereof, the terms of which are incorporated herein by reference (the "Note"), with interest thereon at the rate or rates provided in the Note maturing and being due and payable in full not later than September 1, 2009, and the performance and discharge of each and every obligation of Trustor set forth in the Note, the Trustor further agreeing that this document shall constitute a Construction Security Agreement within the meaning of Nebraska Revised Statute §52-127 et seq. and that it secures an obligation which the Trustor (debtor) has incurred for the purpose of making an improvement of the Land in which the security interest is given and that this is a construction security interest within the meaning of such statutes;

(2) Payment of all other sums, with interest thereon, becoming due or payable under the provisions hereof to either Trustee or Beneficiary;

(3) Due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Trustor contained herein, and in any other instrument executed by Trustor for the purpose of further securing the Secured Indebtedness and all other obligations of Trustor as evidenced by the Note and all other documents and instruments given by Trustor to evidence or secure repayment of the loan identified herein, including (without limitation) that certain Land Development Loan Agreement, dated of even date herewith, and any amendments thereto (the "Loan Agreement") (the foregoing collectively the "Loan Documents"), but expressly excluding, however, the Environmental and ADA Indemnity Agreement which is not a Loan Document for purposes of this Deed of Trust; and

(4) Such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary, its successors or assigns, by Trustor, its successors or assigns, when evidenced by another promissory note or notes, which are by the terms thereof secured by this Deed of Trust.

A. PROVISIONS RELATING TO THE MORTGAGED PROPERTY

1. Taxes and Governmental Claims. Trustor agrees to pay, or cause to be paid, any and all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property, including assessments on appurtenant water stock, on or prior to the date such would become delinquent if not paid. Subject to the provisions hereof relating to impounds, Trustor shall give Beneficiary a receipt or receipts, or certified copies thereof, evidencing every such payment by Trustor. Trustor shall pay and satisfy all other claims, liens and encumbrances affecting or purporting to affect the title to, or which may be or appear to be liens on, the Mortgaged Property, or any part thereof, and all costs, charges, interest and penalties on account thereof, and to

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give Beneficiary, upon demand, evidence satisfactory to Beneficiary of the payment or satisfaction thereof.

2. Insurance, Damage and Destruction. The Trustor shall, at its sole expense, obtain for, deliver to and maintain for the benefit of the Beneficiary during the term of this Deed of Trust, such insurance coverage as is set forth on Exhibit B attached hereto, and such other insurance as Beneficiary may reasonably require.

The Trustor shall pay promptly, or cause to be paid promptly, when due, the premiums of such insurance policies and any renewals thereof. The form and substance of such policies and the companies issuing them shall be acceptable to the Beneficiary.

Delivery of the insurance policies and renewals thereof shall constitute an assignment to the Beneficiary, as further security, of all unearned premiums. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Mortgaged Property in extinguishment of the Secured Indebtedness and other sums secured hereby, all right, title and interest of the Trustor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

In case of loss covered by policies of insurance, the Trustor may take such action as it may reasonably and in good faith deem appropriate to adjust and collect for any losses so long as: (i) Trustor is, in the reasonable opinion of the Beneficiary, diligently pursuing the adjustment and collection of any such insurance and, (ii) the loss must be settled and adjusted, or litigation must have been commenced with respect to the loss, within eighteen (18) months of the loss; otherwise the Beneficiary (whether before or after the foreclosure sale) shall be authorized at its option and without the consent of Trustor to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom. Any expense incurred by the Beneficiary in the adjustment and collection of insurance proceeds (including without limitation the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to the Beneficiary first out of any proceeds. Subject to the provisions of the following paragraphs, the net proceeds available following damage or destruction of the Mortgaged Property shall be used to restore and repair the Mortgaged Property if such proceeds are sufficient to do so. If such proceeds are insufficient to restore or repair the Mortgaged Property to its condition prior to the loss, reasonable wear and tear excepted, the proceeds shall be used to prepay the Secured Indebtedness.

The Trustor shall have the right, exercisable by written notice to Beneficiary within sixty (60) days after the occurrence of a loss described

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above, to disburse the net proceeds of any insurance award to repair, restore, or replace the Mortgaged Property to its condition immediately prior to said loss; provided that in the opinion of Beneficiary all of the following conditions have been met:

- a. There are sufficient proceeds available to complete the repair, restoration, or replacement.
- b. In the event that the foregoing conditions are met within 60 days after said loss occurs, Beneficiary shall make the insurance or condemnation proceeds (not in excess of the amount required for restoration of the Mortgaged Property) available to Trustor. The procedure for draws shall be as specified by Beneficiary.
- c. There shall also be no abatement, delay or diminution of any payments due or coming due under the instrument or document representing the Secured Indebtedness as the result of such repair, delay, rebuilding, replacement, or restoration.
- d. All buildings and improvements acquired in the repair, rebuilding, replacement or restoration of the Mortgaged Property shall be deemed a part of the Mortgaged Property, secured by this Deed of Trust.
- e. Upon the completion date for such replacement or restoration, to the extent the total of funds available pursuant to this subsection are in excess of the costs incident to such repair, restoration or replacement, or if the event of damage or destruction has not significantly impaired the operation of the Mortgaged Property and no repair or restoration is required in the opinion of Trustor and Beneficiary, such excess funds shall be delivered to the Beneficiary for application against the Secured Indebtedness.

Proceeds payable for Rental Value coverage (as defined on Exhibit B) shall be endorsed and paid to the Trustor, but only on condition that no Event of Default exists hereunder.

In no event shall Beneficiary be held responsible for failure to pay for any insurance required hereby or for any loss or damage growing out of a defect in any policy thereof or growing out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Beneficiary to obtain such insurance or to collect the proceeds thereof.

3. Condemnation. If the Mortgaged Property, or any part thereof, or any interest therein, or any rights appurtenant thereto, including, but not limited to, access, light, air and view, be condemned under any power of

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eminent domain or acquired for any public or quasi-public use or in the event of sale in lieu thereof, the Trustor shall promptly give the Beneficiary written notice thereof, generally describing the nature of such taking, damage, sale, proceedings or negotiations and the nature and extent of the taking, damage or sale which has resulted or might result therefrom, as the case may be, together with a copy of each and every document relating thereto received by Trustor, and Beneficiary shall have the right to participate in such proceedings or negotiations. Should any of the Mortgaged Property be taken or damaged by exercise of the power of condemnation or eminent domain, or be sold by private sale in lieu or in anticipation thereof, Trustor does hereby irrevocably assign, set over and transfer to Beneficiary any award, payment or other consideration for the property so taken, damaged or sold up to the amount of the then outstanding Secured Indebtedness. Beneficiary is hereby authorized to intervene in any such action in the name of Trustor, provided that Trustor may control such litigation and take such action as it may reasonably and in good faith deem appropriate to adjust and collect for any such claim or action for so long as it is, in the reasonable opinion of Beneficiary, diligently pursuing its rights, otherwise Beneficiary shall be authorized to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any reasonable expenses incurred by Beneficiary in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Beneficiary first out of the proceeds. The net proceeds of any condemnation award shall be used, at the sole option of Beneficiary, to prepay the Secured Indebtedness or restore the Mortgaged Property. If the Secured Indebtedness is repaid in full, the balance of any such net proceeds shall be paid over to the Trustor.

4. Condition of Mortgaged Property.

- a. Trustor agrees to properly care for and keep the Mortgaged Property in good order, condition and repair and to maintain any improvements on the Premises in good order, condition and repair. Without the prior written consent of Beneficiary, Trustor agrees not to cause or permit any building or improvement which constitutes a part of the Premises to be removed, demolished or structurally altered, in whole or in part, or any fixture or piece of equipment which constitutes a portion of the Mortgaged Property to be removed, damaged or destroyed. Trustor agrees not to cause or permit any waste to any building, improvement, fixture or equipment at any time constituting a portion of the Mortgaged Property. Trustor agrees to complete, restore and reconstruct in a good and workmanlike manner to the condition required hereby any improvement on the Premises which may be constructed,

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damaged or destroyed; not to permit any lien of mechanics or materialmen to attach to the Mortgaged Property, to comply with all laws, ordinances, regulations or governmental orders affecting the Mortgaged Property or requiring any alterations or improvements thereto; not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law, or of any covenants, conditions or restrictions affecting such property; to make or cause to be made from time to time all needful or proper replacements, repairs and renewals; and to do any other act or acts, all in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of such property. Trustor agrees not to remove from the Premises any of the fixtures or Personal Property included in the Mortgaged Property unless promptly replaced with like property of at least equal value.

- b. Beneficiary or Trustee, or both, may, at any time and without notice to Trustor, enter into and upon and inspect the Mortgaged Property, in person or by agent, in such manner and to such extent as they may deem necessary. In the event that Trustor fails to maintain the Mortgaged Property in the manner specified herein, Beneficiary may, at its option, undertake such repairs or maintenance, for the account of Trustor, as Beneficiary deems necessary. The cost of any such repairs or maintenance undertaken by Beneficiary, together with interest thereon at the rate so provided in the Note, from the date such cost was incurred by Beneficiary until repair to Beneficiary, shall become immediately due and payable to Beneficiary, and Beneficiary shall be reimbursed therefor in accordance with the provisions hereof. The right of Beneficiary to undertake such repairs or maintenance shall be optional, and shall in no way limit Beneficiary's right to declare a default under the Note, this Deed of Trust or the other Loan Documents for failure to maintain the Mortgaged Property in accordance with the covenants herein.

- 5. Alterations and Additions. Trustor agrees that, as to any alteration, addition, construction or improvement to be made upon the Premises, all plans and specifications therefor shall be approved in writing by Beneficiary prior to the commencement of work. Once commenced, all work thereunder shall be prosecuted with due diligence, and all construction thereof will be fully in accordance with the plans and specifications so approved, and will comply with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable Board of Fire Underwriters. Should Trustor at any time fail to comply with any governmental notice or demand alleging a failure to comply with any such



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plan, specification, law, ordinance or regulation, such failure shall, at Beneficiary's option, constitute a default hereunder.

6. Status of Title. Trustor represents and warrants that it is the lawful owner in fee simple of the Mortgaged Property, has good and marketable title to the Land and the Improvements free and clear of all liens and encumbrances whatsoever, except, however, for those matters listed as "Permitted Encumbrances" as an Exhibit to the Loan Agreement, and that it has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust. Trustor agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto; to appear and defend this Deed of Trust in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien of this Deed of Trust thereon, or any of the rights of either Trustee or Beneficiary hereunder; and to pay all costs and expenses incurred by either Trustee or Beneficiary in or in connection with any such action or proceeding, including but not limited to Beneficiary's costs; whether any such action or proceeding progresses to judgment and whether brought by or against Trustee or Beneficiary. Beneficiary or Trustee, as the case may be, shall be reimbursed for any such costs and expenses in accordance with the provisions hereof. Trustee or Beneficiary may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as either may, at its sole and absolute discretion, deem advisable, and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as either may deem necessary, and Beneficiary or Trustee, as the case may be, shall be reimbursed therefor in accordance with the provisions hereof.

7. Assignment of Leases and Rents.

- a. Trustor hereby irrevocably, absolutely, presently and unconditionally, grants, transfers and assigns to Beneficiary all rights, title and interest of Trustor in and to all existing and future lease agreements, occupancy agreements and use agreements (collectively the "Leases") relating to the Mortgaged Property or any part thereof, all rents, issues and profits and security deposits thereunder, and all utility deposits made to procure or maintain utility services to the Premises. This assignment shall extend to and cover (i) any and all extensions and renewals of existing and future Leases, (ii) to any and all present and future rights against guarantors of any such obligations and to any and all rents, revenues, issues, income, receipts, profits, deposits and other amounts now or hereafter becoming due to Trustor or collected under the Leases (whether due for the letting of space, for services, materials or installations supplied by Trustor or for any other

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reason whatsoever), insurance proceeds, condemnation awards, damages following defaults by tenants under the Leases (the "Tenants"), cash or securities deposited by Tenants to secure performance of their obligations under the Leases, and all other extraordinary receipts and all proceeds thereof, both cash and non-cash (all of the foregoing, being referred to as the "Rents") and all rights to direct the payment of, make claim for, collect, receive and receipt for the Rents, (iii) all claims, rights, privileges and remedies on the part of Trustor, whether arising under the Leases or by statute or at law or in equity or otherwise, arising out of or in connection with any failure by any Tenant to pay the Rents or to perform any of its other obligations under its Lease, (iv) all rights, powers and privileges of Trustor to exercise any election or option or to give or receive any notice, consent, waiver or approval under or with respect to the Leases, and (v) all other claims, rights, powers, privileges and remedies of Trustor under or with respect to the Leases, including without limitation the right, power and privilege (but not the obligation) to do any and all acts, matters and other things that Trustor is entitled to do thereunder or with respect thereto. This assignment is given to secure payment and performance of the Note, this Deed of Trust, the Loan Documents, and any other agreements at any time secured by this Deed of Trust, and shall neither impair nor diminish the obligations of Trustor under the Leases nor obligate or impose upon Beneficiary any duty to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this assignment and the acceptance of the assignment of Leases and Rents, with all of the rights, powers, privileges and authority so created, shall not under any circumstances be deemed or construed to constitute Beneficiary a mortgagee-in-possession, or in control of, or a partner or joint venturer, with Trustor. Trustor shall and does hereby agree to indemnify and to hold Beneficiary harmless from any liability, loss or damage which it might incur under any Lease or under or by reason of this assignment and from any claims and demands whatsoever which may be asserted against Beneficiary by reason of an alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. In further pursuance of this assignment, and not in lieu hereof, Trustor shall on demand give Beneficiary separate specific assignments of Rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. Unless otherwise specified by Beneficiary in writing, all existing and future Leases for the use or occupancy of all or any part of the Mortgaged Property shall be subordinate and inferior to the lien of this Deed of Trust. Trustor shall not, without the prior written consent of Beneficiary first

obtained, collect, accept or anticipate any rent from any lessee or tenant for a period of time in excess of one (1) month prior to the due date, or accrual of such rent, whichever first occurs.

- b. Beneficiary is hereby authorized to notify all lessees and tenants of the Mortgaged Property of the existence of any and all such assignments. Trustor hereby authorizes and directs the lessees and tenants of the Mortgaged Property that, upon written notice from Beneficiary, all payments required under said Leases, or in any way respecting same, shall be made directly to Beneficiary as they become due. Trustor hereby relieves said lessees and tenants from any liability to Trustor by reason of said payments being made to Beneficiary. Until Beneficiary in writing notifies such lessees and tenants to make such payments to Beneficiary, Trustor shall be entitled to collect all such Rents and/or payments, but after an Event of Default and during the continuation thereof, Trustor's license to collect Rents and payments shall automatically terminate and be revoked and to the extent Trustor collects any Rents thereafter accruing or paid, Trustor covenants to hold all such Rents in trust for the use and benefit of Beneficiary.
- c. Trustor agrees that upon or at any time after (1) the occurrence and continuance beyond any applicable grace or cure period of a default or an event of default hereunder, under the Note or the Loan Documents securing the Note, or (2) the recordation of a notice of public trustee sale for the foreclosure of this Deed of Trust pursuant to applicable Nebraska law, or (3) the commencement of an action to foreclose this Deed of Trust pursuant to applicable Nebraska law, or (4) the commencement of any period of redemption after foreclosure of this Deed of Trust, Beneficiary shall, in any such event, and at any such time, upon application to the Court of competent jurisdiction in the county where the Mortgaged Property or any part thereof is located, by an action separate from the foreclosure, in the foreclosure action, or by independent action (it being understood and agreed that the existence of a foreclosure or a foreclosure action is not a prerequisite to any action for a receiver hereunder), be entitled as a matter of right, without notice and without giving bond to Trustor, to the appointment of a receiver for the Rents, issues, profits and all other income of every kind which shall accrue and be owing for the use or occupation of the Mortgaged Property or any part thereof, whether before or after foreclosure, or during the full statutory period of redemption, if any, upon a showing that Trustor has breached any covenant contained in this Deed of Trust, the Note or the Loan Documents, including, without limitation, any covenant relating to any of the following:

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- i. Repayment of tenant security deposits, with interest thereon, if applicable;
  - ii. Payment when due of prior or current real estate taxes or special assessments with respect to the Mortgaged Property, or the periodic impound for payment of the same; or
  - iii. Payment when due of premiums for insurance of the types required hereby, or the periodic impound for payment of the same.
- d. The costs and expenses (including any receiver's fees and attorney's fees) incurred by Beneficiary pursuant to the powers herein contained shall be immediately reimbursed by Trustor to Beneficiary on demand, shall be secured hereby and shall bear interest from the date incurred at the Default Rate. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto, other than to account for any Rents actually received by Beneficiary. Beneficiary shall have the right to compromise any claim or setoff against rent which any lessee or tenant may assert pursuant to any of the Leases, and any such compromise shall be binding and enforceable against Trustor, unless Beneficiary acted in a grossly negligent and reckless manner, EXCEPT, HOWEVER, nothing contained in this paragraph shall require Beneficiary to take any action to compromise or settle any such claim.
- e. Trustor shall not, without the prior written consent of Beneficiary first obtained, further assign the Rents, issues or profits or deposits from, or relating to, the Mortgaged Property, and any such assignment without the prior written consent of Beneficiary shall be null, void and of no force or effect.

8. Personal Property Security Interest.

- a. In addition to creating a lien against the Mortgaged Property, this Deed of Trust constitutes a security agreement and is intended to, and Trustor does hereby grant and create a security interest in favor of Beneficiary in all property, fixtures, equipment, leases, Rents, issues, income, profits, personal property, instruments, general intangibles, accounts, contract rights and claims included within or related to the Mortgaged Property, and in all deposits made pursuant to impound provisions hereof and all insurance policies and unearned premiums prepaid thereon, insurance proceeds (whether or not Trustor is required to carry such insurance by Beneficiary hereunder), and awards, payments or consideration for the taking of the Mortgaged Property, or any portion thereof, by

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condemnation or exercise of the power of eminent domain, or from any sale in lieu or in anticipation thereof, assigned by Trustor to Beneficiary hereunder (collectively, the "Personal Property"), at any time situated on or used in connection with the construction, maintenance or operation of the Mortgaged Property, to the extent that a security interest may be granted therein under the terms of the Nebraska Uniform Commercial Code. Trustor agrees to supply Beneficiary, but not more frequently than once each calendar year, with an inventory of all such property in a form acceptable to Beneficiary, from time to time, upon receipt of a written request therefor from Beneficiary.

- b. This Deed of Trust shall be self-operative with respect to such Personal Property, but Trustor shall execute and deliver on demand from Beneficiary one or more security agreements, financing statements and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any such Personal Property, the terms and conditions thereof to be as required by Beneficiary, in Beneficiary's sole and absolute discretion. The security interest in the Personal Property as created hereby shall be subject to the right of Trustor and tenants of Trustor to replace any such Personal Property from time to time so long as the replacement Personal Property has a fair market value, as determined by Beneficiary, in Beneficiary's sole and absolute discretion, equal to, or greater than the fair market value of the property replaced. The Personal Property may be moved about and relocated from time to time within the Mortgaged Property without the prior consent of Beneficiary first obtained.
- c. Trustor agrees that, all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all Personal Property covered by the security interest granted hereby, in the Loan Documents or as contained in other instruments executed or to be executed by Trustor, are encumbered as one unit, and upon default by Trustor under the Note secured hereby, or under this Deed of Trust, or any security agreement given pursuant to this paragraph, this Deed of Trust and such security interest, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and all of the Mortgaged Property (both realty and personalty) may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions and requirements of all applicable Nebraska law. The filing of any financing statement relating to any Personal Property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.
- d. This Deed of Trust also constitutes a fixture filing pursuant to the provisions of Nebraska Uniform Commercial Code with respect to those portions of the Mortgaged Property consisting of goods or property which


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are now or are to become fixtures relating to the Land. Trustor covenants and agrees that the filing of this Deed of Trust in the official records of the county in which the Mortgaged Property is located shall also operate from the date of such filing as a fixture filing in accordance with Nebraska Uniform Commercial Code. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the Nebraska Uniform Commercial Code any other security interest in such items, including replacements and additions thereto. Upon the occurrence of an Event of Default, Beneficiary shall have the remedies of a secured party under the Nebraska Uniform Commercial Code and may also invoke the other remedies provided in this Deed of Trust. For purposes of this fixture filing, the name of the debtor is SOUTHPORT WEST PARTNERS LLC, a Nebraska limited liability company and the name of the secured party is Union Bank & Trust Company, a Nebraska state banking corporation, its successors and/or assigns. The respective addresses of the debtor and secured party are set forth on the first page of this Deed of Trust.

- e. This Deed of Trust secures an obligation incurred for the construction of Improvements on the Land including the acquisition cost of the Land, and is a "construction deed of trust" as defined in the applicable statutes. For purposes of subdivision (6) of said statute, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

B. GENERAL PROVISIONS

- 1. Non-Waiver. The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured hereby or to declare a default as herein provided. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and Trustor's failure to pay said entire sum then due shall be and continue to be a default, notwithstanding such acceptance of such amount on account, as aforesaid, and Beneficiary or Trustee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Deed of Trust conferred upon them, or either of them, upon the occurrence of a default, and the right to proceed with foreclosure or Trustee's sale shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice.

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2. Late Payment Charge. Should any payment secured hereby be not paid within ten (10) days after the same becomes due and payable, it is recognized by Trustor that Beneficiary will incur extra expenses for handling of delinquent payments, in loss to Beneficiary of the use of the money due, in frustration to Beneficiary in meeting its loan commitments and related costs and expenses, the exact amount of such extra expenses being impossible to ascertain, and in such case Trustor shall pay to Beneficiary a late payment charge as provided in the Note.
3. Substitute Performance by Beneficiary. Should Trustor fail to pay or perform when required any obligation of Trustor hereunder, or pursuant to the Note, the Loan Documents or any other instrument or agreement of Trustor in connection herewith, Beneficiary may, but shall not be obligated to, without regard to the adequacy of its security and without prejudice to its right to declare a default hereunder, pay or perform the same without notice or demand to or upon Trustor. The payment by Beneficiary of any delinquent tax, assessment or governmental charge, or any lien or encumbrance which Beneficiary in good faith believes might be prior hereto, or any insurance premium for insurance which Trustor is obligated to maintain hereunder but which Beneficiary in good faith believes has not been provided, shall be conclusive between the parties as to the legality and amount so paid. Beneficiary shall be subrogated to all rights, equities and liens discharged by any such expenditure. After any default hereunder, or pursuant to the Note, the Loan Documents, or any other instrument or obligation of Trustor in connection with the loan secured hereby, and whether or not an action is instituted to enforce any provision of this Deed of Trust, the Note, the Loan Documents or such other instrument or obligation of Trustor, Trustor shall pay to Beneficiary any reasonable sums incurred by Beneficiary for attorneys' fees and Beneficiary's costs to enforce this Deed of Trust, the Note, the Loan Documents or other instrument or obligation of Trustor in connection with the loan secured hereby, or to protect or enforce any of Beneficiary's rights pursuant thereto. Any amounts so paid pursuant to this paragraph B.3, or the cost of such performance, together with Beneficiary's costs and all of Beneficiary's expenses incurred in connection with such payment or performance, and any amounts for which Trustor is specifically obligated to reimburse Beneficiary or Trustee pursuant to provisions hereof, including interest on all such amounts at the Default Rate provided in the Note, from the date paid by Beneficiary until repaid to Beneficiary, shall be payable by Trustor to Beneficiary immediately upon notice to Trustor of the amount owing, without further demand, shall be secured by this Deed of Trust, and shall be added to the judgment in any suit brought by Beneficiary or Trustee against Trustor hereon.
4. Non-Liability Of Trustee. At any time, or from time to time, without liability therefor and without notice, upon the written request of

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Beneficiary and presentation of the Note and this Deed of Trust for endorsement, without affecting the personal liability of any person for the payment of the Secured Indebtedness, and without affecting the lien of this Deed of Trust upon the Mortgaged Property for the full amount of all amounts secured hereby, Trustee may (a) reconvey all or any part of the Mortgaged Property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (d) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

5. Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation, and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." When the Mortgaged Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future Rents, issues and profits of the Mortgaged Property to the person or persons legally entitled thereto.
6. Compensation And Indemnification Of Trustee. Trustee shall be entitled to reimbursement for all expenses rendered or expenses incurred in the administration or execution of the trusts hereby created, and Trustor hereby agrees to pay same, subject to all legal limitations. Trustee and Beneficiary shall be indemnified and held harmless by Trustor for any liability, damage or expense, including attorneys' fees, Beneficiary's costs and amounts paid in settlement, which they or either of them may incur or sustain in the execution of this trust or in the doing of any act which they, or either of them, are required or permitted to do by the terms hereof or by law, and they shall be reimbursed therefor in accordance with the provisions herein.
7. Statute of Limitations. The pleading of any statute of limitations as a defense to any obligation secured by this Deed of Trust is hereby waived to the fullest extent permitted by law.
8. Substitution of Trustee. Beneficiary may substitute the Trustee hereunder from time to time by an instrument in writing in any manner now or hereafter provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall thereupon and without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers and duties.



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9. Definitions. The term "Beneficiary" means the original Beneficiary hereunder, or any future owner and holder, including pledgees, of the Note. This Deed of Trust in all its parts applies to and binds the successors and assigns of Trustor. The provisions hereof shall apply according to the context thereof and without regard to the number or gender of words or expressions used.
  10. Amendment. No alternation or amendment of this Deed of Trust, the Note or the Loan Documents shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.
  11. Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Nebraska.
  12. Notices.
    - a. Trustor hereby requests that a copy of any notice of default and every notice of sale hereunder be mailed to it as provided by law at the address set forth above. Trustor may, from time to time, change the address to which notice of default and sale hereunder shall be sent by recording a request therefor, sending a copy of such request to Beneficiary and otherwise complying with the laws of the State of Nebraska. Except as otherwise required by statute, every notice, demand or request to Trustor shall be deemed to have been given upon deposit of such written notice, demand or request in the United States Mail, registered or certified, addressed to Trustor at the address set forth above.
    - b. Beneficiary may change its address for notices set forth above by sending a written notice thereof to Trustor and otherwise complying with the laws of the State of Nebraska. A copy thereof shall be provided to Southport Ventures Partnership, c/o Bruce Hocking, Hocking and Reid, 5757 South 34<sup>th</sup> Street, Suite 100, Lincoln, Nebraska, 68516.
    - c. Notice shall be sent to Southport Ventures Partnership, c/o Bruce Hocking, Hocking and Reid, 5757 South 34<sup>th</sup> Street, Suite 100, Lincoln, Nebraska, 68516.
  13. Representations, Warranties and Covenants of Trustor. Trustor represents and warrants as follows:
    - a. That Trustor is a duly formed limited liability company, validly existing, and in good standing under the laws of the State of Nebraska, and with power to (i) incur the Secured Indebtedness evidenced by the Note; (ii) grant this Deed of Trust; and (iii) enter

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into the other Loan Documents and all other instruments executed and delivered to Beneficiary concurrently herewith;

- b. That this Deed of Trust, the Note, the other Loan Documents and all other instruments executed and delivered to Beneficiary concurrently herewith were executed in accordance with the requirements of law and in accordance with any requirements of Trustor's Articles of Organization and Operating Agreement, and any amendments thereto;
- c. That the execution by Trustor of this Deed of Trust, the Note, the other Loan Documents, and all other instruments executed and delivered to Beneficiary concurrently herewith, and the full and complete performance by Trustor of the provisions thereof, is authorized by Trustor's Articles of Organization and Operating Agreement and by appropriate resolution of Trustor's members and will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance (other than those contained herein or in any instrument delivered to Beneficiary concurrently herewith) upon any property or assets of Trustor under either the articles of organization or operating agreement of Trustor or any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Trustor is a party or by which Trustor is bound;
- d. That save and except for taxes and assessments which are to be paid by Trustor as specified herein, and as otherwise consented by Beneficiary, Trustor will not create or suffer to permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust, any lien or encumbrance upon the Mortgaged Property which shall be or may become superior hereto;
- e. That as of the date of execution of this Deed of Trust it is the legal owner of the Mortgaged Property;
- f. That no portion of the proceeds of the loan in part evidenced by the Note shall be used by Trustor for the purpose of purchasing, acquiring or owning registered equity securities as defined in Regulation G of the United States Federal Reserve Board or for the purpose of refinancing, releasing or retiring any Secured Indebtedness originally incurred for such purpose.
- g. That Trustor is duly authorized to do business in the State of Nebraska.

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- h. That the Trustor covenants and agrees to fully and promptly pay the principal and all interest payable under the Note when and as the same becomes due, whether at the stated maturity thereof, or by acceleration, call for redemption, or otherwise, and to fully and promptly perform all other covenants and agreements required to be performed by the Trustor under the Note and the Loan Documents.
- i. That Trustor shall pay or shall cause to be paid when due all utility charges which are incurred by Trustor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Mortgaged Property or any portion thereof.

14. Due on Sale or Encumbrance. In the event that without first obtaining the written consent of the Beneficiary there shall be any (i) transfer, sale, mortgage or conveyance (except leases of space in the Mortgaged Property as specifically permitted under the Loan Agreement) of all or any part of the interest of the Trustor in the Mortgaged Property or any part thereof, whether voluntarily or by operation of law, or (ii) mortgage, pledge, encumbrance or lien allowed to be outstanding against the Mortgaged Property, or any portion thereof, or any security interest allowed to exist therein, except as created by this Deed of Trust and the other documents which secure the Note, and except Permitted Encumbrances, the entire amount secured hereby shall become immediately due and payable without notice at the option of the Beneficiary and failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent transfer, sale or conveyance. It is understood that a consent by the Beneficiary to any such transfer, conveyance or mortgage shall not be deemed a waiver of the right to require such consent to any subsequent transfer, mortgage or conveyance and that the provisions of this paragraph shall be binding upon any and all successive holders of the interest of the Trustor in the Mortgaged Property or any part thereof.

**NOTICE - THE SECURED INDEBTEDNESS IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS SECTION.**

No transfer, conveyance, lease, sale or other disposition shall relieve Trustor from personal liability for its obligations hereunder or under the Note, whether or not the transferee assumes this Deed of Trust. The Beneficiary may, without notice to the Trustor, deal with any successor owner of all or any portion of the Mortgaged Property in the same manner as with the Trustor, without in any way discharging the liability of the Trustor hereunder or under the Note.

15. Environmental/Hazardous Materials.

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a. Any terms used in this Section which are defined in local, state or federal statutes, codes, ordinances, rules and/or regulations promulgated in relation thereto shall have the meaning assigned to such terms in such statutes, codes, ordinances, rules and regulations.

b. The Trustor hereby represents that:

- i. To the best of the Trustor's knowledge, after due inquiry and investigation, the Mortgaged Property has never been used by previous owners or occupants or by the Trustor to generate, manufacture, refine, transport, treat, store, handle or dispose of any toxic material, hazardous substances or hazardous waste, including any solid, liquid, gaseous, or thermal contaminant such as smoke, fumes, acids or wastes, except as disclosed in Environmental Reports, and the Trustor will not use the Mortgaged Property for such purposes;
- ii. To the best of the Trustor's knowledge, after due inquiry and investigation except as disclosed on Exhibit C attached hereto, the Mortgaged Property has never contained any underground or above-ground storage tanks or any asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs) (in the form of electrical transformers, cooling oils, or other form), radioactive materials, explosives, petroleum products or other toxic materials, hazardous substances or hazardous wastes, and the Trustor shall not permit such materials, substances or wastes to be present on the Mortgaged Property;
- iii. The Trustor has not received a summons, citation, directive, letter or other communication, written or oral, from any local or state agency or agency of the U.S. Government concerning the Mortgaged Property or any intentional or unintentional action or omission on the Trustor's part, with respect to toxic materials, hazardous substances or hazardous wastes upon or affecting the Mortgaged Property;
- iv. The Trustor shall not cause or permit to exist, as a result of an intentional or unintentional act or omission on its part, a release, spill, leakage, pumping, emission, pouring, emptying or dumping of a toxic material, hazardous substance or hazardous waste into waters or onto lands within or without the State of Nebraska, unless said release, spill, leak, etc. is pursuant to and in compliance with the conditions of a permit issued by appropriate federal or state governmental authorities.

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Should any representation or warranty contained herein prove to be false or should the Trustor fail to comply with the affirmative covenants contained in this Section, any such false representation or warranty or any such failure to comply shall constitute an event of default hereunder and shall entitle the Beneficiary to exercise all remedies available to it hereunder.

- v. The Trustor is aware that the Beneficiary is relying on the representations contained in this Section in making the loan secured by this Deed of Trust, and the Trustor hereby agrees to indemnify, defend and hold the Beneficiary harmless against any loss, cost, claims, demands, judgments, damages, causes of action, penalties and expenses incurred by the Beneficiary, whether during the term hereof or at anytime thereafter, including, but not limited to, reasonable attorneys' fees, arising out of or in any way connected with the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic material or hazardous substances or hazardous waste on or from the Mortgaged Property, or with respect to the Mortgaged Property the use, specification or inclusion of any product containing such substances, or the performance of (or failure to perform) the abatement of any source of pollution, or the replacement or removal of any soil, water, surface water or groundwater containing such substances and any action taken by Beneficiary to enter and inspect the Mortgaged Property. The Trustor, its successors and assigns, shall bear, pay and discharge when the same become due and payable, all such judgments, awards or claims for damages, penalties or otherwise against the Beneficiary, in respect of the Mortgaged Property, and shall hold the Beneficiary harmless therefrom, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations with any and all persons, political subdivisions or government agencies arising out of any of the occurrences described herein. The indemnification set forth in this Section shall survive any termination, satisfaction or release of this Deed of Trust; provided, however, that said indemnification shall apply only when the event(s) giving rise to such indemnification obligations relate to the Mortgaged Property and occurred prior to such termination, satisfaction or release, and provided, further, that said indemnification shall not apply when the event(s) giving rise to such indemnification obligations were caused solely by the Beneficiary's negligence or intentional acts.

16. Offsets. No offset or claim that Trustor now or may in the future have against Beneficiary shall relieve Trustor from paying installments or performing any other obligation herein or secured hereby.

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17. Further Assurances. Trustor will, upon request of Beneficiary, promptly correct any errors which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by the Beneficiary to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest. Upon any failure by the Trustor to do so, the Beneficiary may make, execute, record, file, re-record or refile any and all such deeds of trust, financing statements, continuation statements, instruments, certificates and documents for and in the name of the Trustor, and the Trustor hereby irrevocably appoints the Beneficiary the agent and attorney -in-fact of the Trustor to do so. The Trustor further agrees to pay to the Beneficiary, upon demand, all costs and expenses incurred by the Beneficiary in connection with the preparation, execution, recording, filing and refiling of any such documents including charges for examining title and attorneys' fees for rendering an opinion as to the priority of this Deed of Trust or other security instrument as a valid, first and subsisting lien. However, neither a request so made by the Beneficiary nor the failure of the Beneficiary to make such a request shall be construed as a release of any of the Mortgaged Property, or any part thereof, from the lien of this Deed of Trust, it being understood and agreed that this covenant and any deed of trust or security instrument delivered to the Beneficiary are cumulative and given as additional security.

18. Severability. Should any term, provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. Should this instrument be or become ineffective as a Deed of Trust, then these presents shall be construed and enforced as a realty mortgage, with Trustor being the mortgagor and Beneficiary being the mortgagee.

19. Interest Rate. Notwithstanding any provisions herein, or in the Note secured hereby, or in the other Loan Documents or any other agreement between Trustor and Beneficiary, the total liability of Trustor for payments in the nature of interest shall not exceed the limits imposed by the usury laws of the State of Nebraska.

20. Additional Rights and Remedies. In the event Trustor fails or refuses to surrender possession of the Mortgaged Property after any Trustee's sale, Trustor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided that this remedy is not exclusive or in derogation of any other right or remedy available to Beneficiary.

21. Power of Sale. Trustor recognizes that notwithstanding those provisions of this Deed of Trust relating to foreclosure of the Premises pursuant to the power of sale, the Constitution of the United States and of the State of Nebraska may entitle Trustor to a hearing in a court of competent jurisdiction before the Premises may be sold by Trustee

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under the power of sale. Trustor hereby reaffirms the provisions of this Deed of Trust authorizing the sale of the Premises pursuant to the power of sale without a prior hearing and hereby specifically and knowingly waives any right Trustor may have to a hearing before the Premises or any part thereof may be sold under the power of sale.

22. Impounds. At any time after a default by Trustor hereunder, or upon the request of Beneficiary, and subject to the terms of any leases between Trustor and tenants of space in the Mortgaged Property consented to by Beneficiary, Trustor shall deposit with Beneficiary or Beneficiary's designee initially a deposit to pay the costs of taxes, assessments and insurance premiums next due, and thereafter on each installment payment date as set forth in the Note secured hereby one-twelfth (1/12) of the amount of real estate taxes and any assessments assessed or to be assessed against the Mortgaged Property for the then current year, as estimated by Beneficiary, together with one-twelfth (1/12) of the total of all insurance premiums required to be paid for the then current year as estimated by Beneficiary. In the event Beneficiary, in its sole and absolute discretion, at any time determines that the amounts deposited for payment of real estate taxes, assessments and insurance premiums will be insufficient to pay such taxes, assessments and/or premiums, Trustor shall, within fifteen (15) days after written notice from Beneficiary, deposit the difference between the amounts previously deposited and the amount Beneficiary determines will be necessary to pay such taxes, assessments and/or premiums. Such moneys shall at proper times be progressively returned to Trustor for use in the actual payment of such taxes, assessments and insurance premiums or, at the sole election of Beneficiary, Beneficiary may disburse such moneys in actual payment of taxes, assessments and premiums, but nothing in this paragraph shall release Trustor of its obligations to pay such taxes and assessments as the same become due and payable under the provisions hereof, and to maintain in force all insurance policies as required hereby. All impounds required under this paragraph shall be deposited in a non-interest bearing account of Beneficiary, to be withdrawn by Beneficiary at such times and in such amounts as shall be deemed appropriate by Beneficiary. All amounts deposited under this paragraph are hereby assigned to Beneficiary as additional security for the Secured Indebtedness, and, so long as any event of default as set forth herein or a default in the payment of any money or the performance of any covenant or obligation herein contained or secured hereby exists, then any deposits made by Trustor under this paragraph may, at the option of Beneficiary, be applied to the payment of principal or interest upon the Secured Indebtedness, in lieu of being applied for any of the purposes of this paragraph previously stated.

23. Separation of Real Estate Tax Parcels. For the purpose of securing separate taxation and assessment on account of those taxes, assessments and other charges mentioned in paragraph A.1 hereof, Trustor shall, if not already accomplished, obtain a separation of the Mortgaged Property from all other adjacent lands, and the same shall be promptly accomplished and evidenced in the appropriate public records.

24. Time Of The Essence. Time of each payment and performance of each of Trustor's obligations pursuant to the Note, this Deed of Trust, the Loan Documents and each other instrument or obligation of Trustor as secured hereby is specifically declared

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to be of the essence. All covenants and agreements of Trustor contained herein or in any other Loan Document shall continue in full force and effect from and after the date hereof until indefeasible payment in full of the Secured Indebtedness.

25. Right to Cure Defaults. If the Trustor shall fail to comply with any of the terms, covenants and conditions herein with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term, covenant or condition herein contained, the Beneficiary may (but shall be under no obligation to) perform the same and/or make advances to perform the same without notice to or demand upon the Trustor and without waiving or releasing any obligation or default and, where necessary, enter the Mortgaged Property for the purpose of performing any such term, covenant or condition without liability to the Trustor for any loss or damage caused by such entry. The Trustor agrees to repay all sums so advanced upon demand, with interest from the dates such advances are made, at the Default Rate under the Note, and all sums so advanced, with interest, shall be secured hereby, but no such advance shall be deemed to relieve the Trustor from any default hereunder.

26. Indemnification; No Abatement. The Trustor will protect, indemnify, defend and save harmless the Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by or asserted against the Beneficiary by reason of any accident, injury to or death of any person or loss of or damage to any property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, during the term of this Deed of Trust; any use, nonuse or condition of the Mortgaged Property or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, during the term of this Deed of Trust; any failure on the part of the Trustor to perform or comply with any of the terms of this Deed of Trust; or performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property at the instance or request of the Trustor. Any amounts payable to the Beneficiary under this Section which are not paid within 10 days after written demand therefor by the Beneficiary shall bear interest at the Default Rate provided in the Note, which shall in no event exceed the maximum rate allowed by law from the date of such demand. In case any action, suit or proceeding is brought against the Beneficiary by reason of any such occurrence, the Trustor, upon the Beneficiary's request, will at the Trustor's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended, either by counsel designated by the Trustor and approved by the Beneficiary, or, where such occurrence is covered by liability insurance, by counsel designated by the insurer. The obligations of the Trustor under this Section shall survive any termination, satisfaction or release of this Deed of Trust. All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any



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part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. Notwithstanding the foregoing provisions, the Trustor shall not be obligated to indemnify Beneficiary for any loss arising out of Beneficiary's negligence or willful conduct, or for claims arising after the date on which the Beneficiary takes possession of the Mortgaged Property.

27. Debtor-Creditor Relationship. Nothing contained herein or in any Loan Document shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of debtor-creditor. Trustor and Beneficiary expressly disclaim any intent to create a partnership or joint venture pursuant to this Deed of Trust, any other Loan Document, or any other document related hereto or thereto.

28. Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

29. Nonforeign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Mortgaged Property pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury that:

- a. Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue code and the regulations promulgated thereunder; and
- b. Trustor's U.S. employer identification number is 37-1486883; and
- c. Trustor's principal place of business is Southport West Partners LLC 14301 FNB Parkway, Suite 100, Omaha, NE 68154; and

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- d. Trustor is duly qualified to do business in Nebraska. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the appropriate Nebraska tax authority and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

30. Patriot Act Compliance. The Trustor shall not (a) be or become subject at any time to any law, regulation or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Beneficiary from making any advance or extension of credit to Trustor or from otherwise conducting business with Trustor, or (b) fail to provide documentary and other evidence of Trustor's identity as may be requested by Beneficiary at any time to enable Beneficiary to verify Trustor's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

C. DEFAULT PROVISIONS.

1. Events Of Default. Any one or more of the Events of Default described in the Loan Agreement shall be an Event of Default hereunder.

Upon the occurrence of an Event of Default, the Beneficiary may at its option (unless all Events of Default shall theretofore have been remedied and all costs and expenses in connection with such remedies shall have been paid by the Trustor) declare the principal of and the accrued interest on the Note, and including all sums advanced hereunder with interest, to be forthwith due and payable, and thereupon the Note, including both principal and all interest accrued thereon, and including all sums advanced hereunder and secured hereby and interest thereon, shall be and become immediately due and payable without presentment, demand or further notice of any kind, all of which are hereby waived. Furthermore, if any Event of Default shall have occurred and be continuing, the Beneficiary may at its option withhold further advances or advance such further sums under the Loan Agreement as the Beneficiary may in its discretion deem appropriate. Time is of the essence hereof.

2. Remedies Upon Default. In the event of a default hereunder, the interest rate on the indebtedness evidenced by the Note shall be increased to the Default Rate as defined in and on such terms as are provided for in the Note. At any time after default hereunder, Beneficiary may (if it has not already done so pursuant hereto or to the Note), at its option, and without further notice or demand, declare all Secured Indebtedness immediately due and payable and irrespective of whether Beneficiary exercises such option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

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- a. Beneficiary may, either in person or by its 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, take possession of, manage and operate the Mortgaged Property, or any part thereof, make repairs and alterations, and do any acts which Beneficiary deems proper to protect the security hereof, including but not limited to those granted Beneficiary pursuant to the other Loan Documents; and either with or without taking possession, in its own name, sue for or otherwise collect and receive Rents, issues, and profits, including those past due and unpaid, and Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution for such purposes, and Beneficiary may apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees and Beneficiary's costs, upon any Secured Indebtedness, and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the Premises any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any Rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default hereunder or invalidate any act done pursuant to any such notice and shall not constitute a waiver of any other remedies of Beneficiary under the Loan Documents. Notwithstanding Beneficiary's continuance in possession or receipt and application of Rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of a default, including the right to exercise the power of sale. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary is so entitled, without regard to the adequacy of any security for the Secured Indebtedness.
- b. Beneficiary shall, without regard to the adequacy of any security for the Secured Indebtedness, be entitled as a matter of right to the appointment of a receiver by any court having jurisdiction, without notice, to take immediate possession of and protect the Mortgaged Property, and operate the same and collect the Rents, issues and profits therefrom.
- c. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage and sell the Mortgaged Property pursuant to the judgment or decree of a

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court of competent jurisdiction or to enforce any of the covenants hereof.

- d. Beneficiary may elect to cause the Mortgaged Property, or any part thereof, to be sold as follows:
  - i. Beneficiary may proceed as if all of the Mortgaged Property were real property, or Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Premises without causing structural damage thereto as if the same were Personal Property, and dispose of the same separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.
  - ii. Beneficiary may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law), or Beneficiary may delay any such sale or other disposition for such period of time as Beneficiary deems to be in its best interest. Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest.
  - iii. Should Beneficiary elect to cause any of the Mortgaged Property to be disposed of as Personal Property, it may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the Nebraska Uniform Commercial Code or in accordance with any other remedy provided by law. Trustor, Beneficiary and Trustee shall each be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the Nebraska Uniform Commercial Code. Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is made, and if such notice is sent to Trustor as provided herein, it shall constitute reasonable notice to Trustor.

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- iv. Should Beneficiary elect to sell the Mortgaged Property which is real property or which Beneficiary has elected to treat as real property, upon such election Beneficiary shall 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 Mortgaged Property to be sold, and, upon receipt of such notice from Beneficiary, (A) Trustee shall cause to be recorded, published and delivered to Trustor and such other persons and entities as shall be entitled thereto, such Notice of Default and Election to Sell as then required by law and by this Deed of Trust, (B) Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Mortgaged Property at the time and place of sale fixed by it in said 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, and (C) 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 of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. Trustee may postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.
- v. In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, terms of sale, sale, purchaser, payment of purchase money and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or

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conveyance shall be conclusive against all persons as to such facts recited therein.

- vi. Beneficiary and/or Trustee shall apply the proceeds of any sale or disposition hereunder to payment of the following: (1) the expenses of such sale or disposition, together with Trustee's fees, reasonable attorneys' fees, Beneficiary's costs, and the actual cost of publishing, recording, mailing and posting notice; (2) the cost of any search or other evidence of title procured in connection therewith; (3) the payment of the Note secured by this Deed of Trust, the other Loan Documents and all other sums due Beneficiary from Trustor; (4) all other sums secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto in the order of their priority.
- vii. Trustor hereby requests that a copy of any notice of default and that any notice of sale be mailed to it at the address set forth in the introductory paragraph of this Deed of Trust.
- viii. Upon foreclosure of the lien of this Deed of Trust (whether by judicial action or by exercise of the power of sale therein), or delivery of a deed in lieu of foreclosure, all right, title and interest of Trustor in, to and under the Leases shall thereupon vest and become the absolute property of the purchaser of the Mortgaged Property in such foreclosure proceeding, or the grantee in such deed, without any further act or assignment by Trustor. Nevertheless, Trustor shall execute, acknowledge and deliver from time to time such further instruments and assurances as Beneficiary may require in connection therewith and hereby irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution, in its name and stead to execute all appropriate instruments of transfer or assignment, or any instrument of further assurance, as Beneficiary may deem necessary, and Beneficiary may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof.
- e. To the extent permitted by law, Trustor shall be and remain liable for any deficiency remaining after sale, either pursuant to the power of sale or judicial proceedings. After default or breach, Trustor shall pay Beneficiary's attorneys' fees, Beneficiary's costs,

Trustee's attorneys' fees, Trustee's fees and its cost and expenses incurred as a result of said default or breach, and if suit is brought, all costs of suit, all of which sums shall be secured by this Deed of Trust. As used herein, "costs of suit" shall include but not be limited to costs of tests and analyses, architectural, engineering and other professional fees and costs, expert witness fees and costs, travel and accommodation expenses, deposition and trial transcript expenses and costs of court. Trustor's statutory rights of reinstatement, if any, are expressly conditioned upon Trustor's payment of all sums required under the applicable statute and performance of all required acts.

3. Foreclosure Procedure. Trustor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.
4. Foreclosure Purchase. Upon any sale of the Mortgaged Property, or any part thereof, whether made under a power of sale herein granted or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Secured Indebtedness then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased. To the extent permitted by law, Trustor hereby waives any right of redemption.
5. Remedies. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies. The unenforceability of any provision in this Deed of Trust shall not affect the enforceability of any other provision herein. If there exists additional security for the performance of the obligations secured hereby, the holder of the Note, at its sole option, and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine. At Beneficiary's option, Trustee shall be authorized to take the steps and exercise the rights and remedies explicitly reserved to Beneficiary herein.

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6. Waiver of Defenses.

- a. Trustor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, and all other formalities. Trustor waives all rights or privileges it might otherwise have to require Trustee or Beneficiary to proceed against or exhaust the assets encumbered hereby or by any other security document or instrument securing the Note or to proceed against any guarantor of such Secured Indebtedness, or to pursue any other remedy available to Beneficiary in any particular manner or order under the legal or equitable doctrine or principle of marshaling or suretyship, and further agrees that Trustee or Beneficiary may proceed against any or all of the assets encumbered hereby, or by any other security document or instrument securing the Note, in the event of default in such order and manner as Beneficiary, in its sole discretion, may determine.
- b. All references to the Loan Documents shall also include any instrument or agreement executed by Trustor currently with or subsequent to the date of this Deed of Trust which is secured by this Deed of Trust in accordance with the terms hereof.

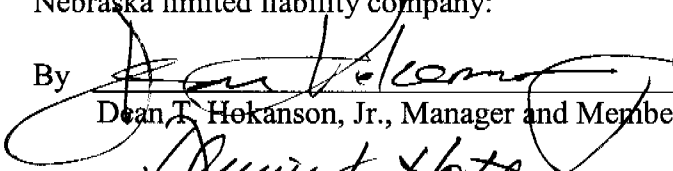
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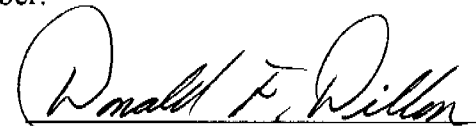
IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

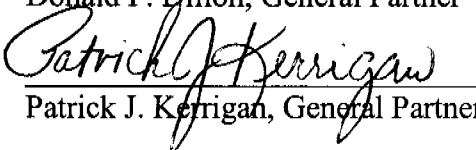
SOUTHPORT WEST PARTNERS LLC, a  
Nebraska limited liability company:

By   
Dean T. Hokanson, Jr., Manager and Member

By   
Dennis J. Hoth, Manager and Member

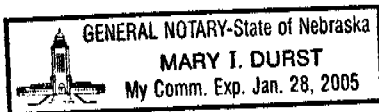
By SOUTHPORT VENTURES PARTNERSHIP,  
Member:

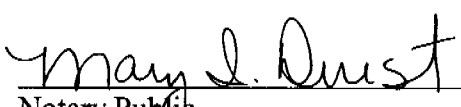
By   
Donald F. Dillon, General Partner

By   
Patrick J. Kerrigan, General Partner

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

The foregoing instrument was acknowledged before me this 16 day of August, 2004, by Dean T. Hokanson, Jr. a Manager of SOUTHPORT WEST PARTNERS LLC, a Nebraska limited liability company, for and on behalf of said limited liability company.

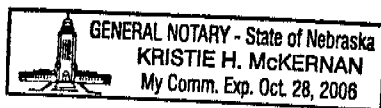


  
Notary Public

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

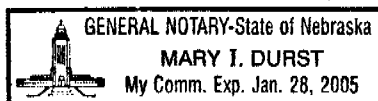
The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 2004, by Dennis J. Hoth, a Manager of SOUTHPORT WEST PARTNERS LLC, a Nebraska limited liability company, for and on behalf of said limited liability company.



Kristie H. McKernan  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Lancaster )

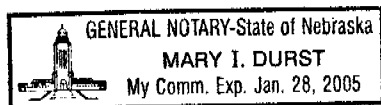
The foregoing instrument was acknowledged before me this 16 day of August, 2004, by Donald F. Dillon, general partner of SOUTHPORT VENTURES PARTNERSHIP, for and on behalf of said partnership.



Mary I. Durst  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Lancaster )

The foregoing instrument was acknowledged before me this 16 day of August, 2004, by Patrick J. Kerrigan, general partner of SOUTHPORT VENTURES PARTNERSHIP, for and on behalf of said partnership.



Mary I. Durst  
Notary Public

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## EXHIBIT A

### Legal Description of the Mortgaged Property

All that certain real property located in the County of Sarpy, State of Nebraska described as follows:

A TRACT OF LAND LOCATED IN PART OF TAX LOT 7, A TAX LOT LOCATED IN THE NORTH 1/2 OF THE SW1/4 OF SAID SECTION 18; AND ALSO TOGETHER WITH PART OF TAX LOT 13, A TAX LOT LOCATED IN THE NORTH 1/2 OF THE SE1/4 OF SAID SECTION 18; AND ALSO TOGETHER WITH TAX LOT 14, A TAX LOT LOCATED IN THE SOUTH 1/2 OF SAID SE1/4 OF SECTION 18; AND ALSO TOGETHER WITH PART OF TAX LOT 6A, A TAX LOT LOCATED IN SAID SOUTH 1/2 OF THE SW1/4 OF SECTION 18; ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 18; THENCE N02°54'19"W (ASSUMED BEARING) ALONG THE WEST LINE OF SAID SE1/4 OF SECTION 18, SAID LINE ALSO BEING THE EAST LINE OF SAID SW1/4 OF SECTION 18, A DISTANCE OF 105.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID POINT ALSO BEING ON THE EASTERLY LINE OF SAID TAX LOT 6A, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT 14, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE S78°16'27"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, A DISTANCE OF 165.86 FEET; THENCE S86°56'35"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, A DISTANCE OF 210.65 FEET; THENCE N03°02'10"W, A DISTANCE OF 25.94 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 455.00 FEET, A DISTANCE OF 221.95 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N17°00'38"W, A DISTANCE OF 219.76 FEET; THENCE N30°59'07"W, A DISTANCE OF 578.39 FEET; THENCE S86°55'48"W, A DISTANCE OF 698.93 FEET; THENCE N47°47'04"W, A DISTANCE OF 507.74 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 80; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 80 ON A CURVE TO THE RIGHT WITH A RADIUS OF 11309.16 FEET, A DISTANCE OF 421.42 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N43°49'05"E, A DISTANCE OF 421.39 FEET; THENCE N45°05'05"E ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 80, A DISTANCE OF 804.81 FEET; THENCE N70°59'20"E ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 80, A DISTANCE OF 652.11 FEET; THENCE S03°06'34"E, A DISTANCE OF 482.65 FEET; THENCE N86°53'26"E, A DISTANCE OF 297.93 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 345.00

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FEET, A DISTANCE OF 374.26 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S62°01'56"E, A DISTANCE OF 356.17 FEET; THENCE S30°57'18"E, A DISTANCE OF 64.55 FEET; THENCE N59°02'42"E, A DISTANCE OF 309.97 FEET; THENCE N30°57'18"W, A DISTANCE OF 80.18 FEET; THENCE N59°02'42"E, A DISTANCE OF 329.20 FEET TO A POINT ON THE EASTERLY LINE OF SAID TAX LOT 13, SAID LINE ALSO BEING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET; THENCE S30°57'18"E ALONG SAID EASTERLY LINE OF TAX LOT 13, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET, A DISTANCE OF 586.95 FEET TO THE SOUTHEAST CORNER OF SAID TAX LOT 13, SAID POINT ALSO BEING ON THE NORTH LINE OF SAID TAX LOT 14; THENCE N86°55'27"E ALONG SAID NORTH LINE OF TAX LOT 14, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET, A DISTANCE OF 45.85 FEET TO THE NORTHEAST CORNER OF SAID TAX LOT 14; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID TAX LOT 14, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET ON A CURVE TO THE LEFT WITH A RADIUS OF 1542.41 FEET, A DISTANCE OF 741.74 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S46°25'38"E, A DISTANCE OF 734.61 FEET; THENCE S47°04'31"E ALONG SAID EASTERLY LINE OF TAX LOT 14, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET, A DISTANCE OF 87.60 FEET; THENCE S20°42'28"E ALONG SAID EASTERLY LINE OF TAX LOT 14, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET, A DISTANCE OF 100.73 FEET TO THE SOUTHEAST CORNER OF SAID TAX LOT 14, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 126TH STREET AND SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID TAX LOT 14, SAID LINE ALSO BEING SAID NORTHERLY RIGHT-OF-WAY LINE OF GILES ROAD ON THE FOLLOWING DESCRIBED COURSES; THENCE S30°33'48"W, A DISTANCE OF 406.58 FEET; THENCE S56°27'43"W, A DISTANCE OF 369.45 FEET; THENCE S74°39'17"W, A DISTANCE OF 187.71 FEET; THENCE S86°58'12"W, A DISTANCE OF 494.09 FEET; THENCE N78°36'33"W, A DISTANCE OF 361.39 FEET; THENCE S77°02'44"W, A DISTANCE OF 290.11 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 4,357,771 SQUARE FEET OR 100.041 ACRES, MORE OR LESS.

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## **EXHIBIT B**

### **Insurance Requirements**

#### **LIABILITY INSURANCE**

An ORIGINAL CERTIFICATE or other evidence (e.g. an ACORD 27 certificate) of General Comprehensive Public Liability Insurance naming Trustor as an insured, and written by a carrier approved by Beneficiary with a current Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the State of Nebraska) that includes:

1. \$3 million combined single limit coverage.
2. Additional Insured Endorsement naming Union Bank & Trust Company.
3. 30-day notice to Beneficiary in the event of cancellation, non-renewal or material change

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**EXHIBIT C**

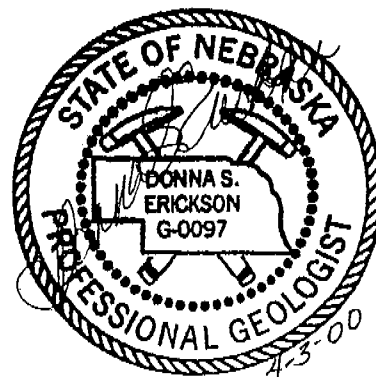
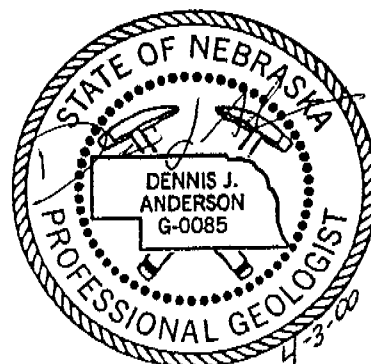
Environmental Phase I Site Assessment dated April 3, 2000 prepared by Thiele  
Geotech, Inc.

*Phase I Environmental Assessment Report*

**Commercial Development Site  
126<sup>th</sup> and Giles Road  
Omaha, Nebraska 68138**

**Prepared for:**  
RS Land Co. c/o E&A Consulting Group  
12001 Q Street, Suite A  
Omaha, Nebraska 68137

April 3, 2000  
TG Project No. 00185.1



**THIELE GEOTECH, INC**  
822 North 40<sup>th</sup> Street  
Omaha, Nebraska 68131-1829  
402/556-2171 Fax 402/556-7831  
[www.thielegeotech.com](http://www.thielegeotech.com)

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*Phase I Environmental Assessment Report*  
**Commercial Development Site**  
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## 1.0 INTRODUCTION

Thiele Geotech, Inc. (TG) has been retained by RS Land Co. to perform a Phase I Environmental Site Assessment (ESA) on property located at 126<sup>th</sup> and Giles Road, Omaha, Nebraska, 68138. This ESA is an instrument of service for the exclusive use of our Client and their lender(s) only. No third party may use this report, or any information contained herein. With the permission of the Client, TG may authorize a third party to use this Report, and to rely on the information contained in this report, but only to the same extent of the Client's reliance, and subject to the same contractual, technological, and other limitations to which the Client has agreed.

This ESA has been prepared to characterize existing environmental conditions on the subject property and to assess potential environmental concerns caused by activities/practices on adjoining and/or nearby properties. Conclusions have been based primarily upon background research and a site reconnaissance conducted on March 28 and 29, 2000. The background research included:

- Review of recorded land records, examination of aerial photographs, and review of the current United States Geological Society (USGS) Topographic Map of the area;

- Identification/location of known or suspected hazardous waste sites, permitted hazardous waste facilities, active/inactive solid waste facilities, nearby Resource Conservation and Recovery Act (RCRA) sites, nearby surface spill sites, and nearby registered underground storage tank (UST) and leaking UST (LUST) sites.

This ESA was conducted in general accordance with American Society of Testing Materials (ASTM) Standard E 1527-97, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. According to the Standard, "... the goal of the processes established by this practice is to identify recognized environmental conditions. The term recognized environmental conditions means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property ... even under conditions in compliance with

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laws."<sup>1</sup> More simply stated, "The purpose . . . is to identify, to the extent feasible pursuant to the processes prescribed herein, recognized environmental conditions in connection with the property."<sup>2</sup>

Adherence to this Standard is intended to allow the user (or owner) to fulfill the requirement that "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice,"<sup>3</sup> under the innocent landowner defense in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), was conducted.

This ESA did not include an analysis or determination as to whether the Client or site is in compliance with federal, state, or local laws, statutes, ordinances, or regulations. These services also did not include identification or evaluation of lead based paint, endangered species, historical or archeological resources, or wetlands. This ESA specifically excluded sampling or testing for the presence of hazardous substances, hazardous materials, hazardous wastes, petroleum, or polychlorinated biphenyls (PCBs).

It is important to note that this ESA does not constitute a guarantee or warranty of the environmental condition of the subject property. Additional stipulations concerning the findings of this report are discussed in Section 6.0 "Limitations".

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<sup>1</sup>ASTM Standard E 1527-97, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, May 1997, p. 1.

<sup>2</sup>ASTM Standard E 1527-97, May 1997, p. 9.

<sup>3</sup>42 USC § 9601(35)(B)

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## **2.0 SITE DESCRIPTION**

### **2.1 LOCATION, SITE AND VICINITY CHARACTERISTICS**

The project site is identified as Commercial Development Site, and is located at 126<sup>th</sup> Street and Giles Road, Omaha, Nebraska, 68138. The site consists of undeveloped land. The Commercial Development site is situated on a generally triangular shaped parcel of land consisting of approximately 200 acres of land. The Topographic Map and Site Vicinity Map, both attached in the Appendix, further illustrate the disposition of the assessment site and the neighboring properties.

The site is bordered by Interstate Highway 80 (I-80) right-of-way (ROW) to the north, by Former 120<sup>th</sup> Street ROW to the east, by a farmstead and cropland to the west, and by Giles Road ROW to the south. South 126<sup>th</sup> Street ROW crosses through the assessment from northwest to southeast. Harrison Street ROW crosses through the northeast corner of the assessment site. The general area of the project site is chiefly composed of undeveloped land, agricultural cropland, and residential development.

According to personnel at the Sarpy County Planning Department, the assessment site is currently zoned light industrial. Surrounding properties are zoned for agricultural use.

### **2.2 LEGAL DESCRIPTION**

The site is located within the South Half and Northeast Quarter of Section 18, and the West Half of Section 17, both in Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska. A legal description is included in the Appendix.

### **2.3 IMPROVEMENTS AND EASEMENTS**

It is assumed that there are easements present on-site for various public and private utilities (natural gas, electric, water, sanitary and storm sewers, cable television) that provide essential services within the Omaha metropolitan area. Easement boundaries are shown on the legal description in the Appendix.

There were no improvements observed on site during the site reconnaissance conducted on March 28, 2000.

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## 2.4 CURRENT USE OF THE PROPERTY

Currently, the assessment site is used as agricultural cropland. The photographs taken during the site reconnaissance conducted on March 28 and 29, 2000, illustrate the condition of the site on those days and are included in the Appendix.

## 2.5 PAST USE OF THE PROPERTY

In researching the past use of this property, it appears that this property has been in agricultural use until present. Aerial photographs from 1970 (Photobase for the Soil Survey Map), 1973, 1982, and 1994 were reviewed, and indicate that the site has been in use as a farmstead and cropland until 1994, when South 126<sup>th</sup> was evident and initial development was observed. No other use or development was revealed through review of aerial photographs, and it is assumed that the assessment site did not incur any development between the dates of the aerial photographs examined.

Portions of the 1970 (Soil Survey Map), 1973, 1982, and 1994 aerial photographs have been reproduced and are included in the Appendix.

## 2.6 CURRENT AND PAST USE OF ADJOINING PROPERTIES

The site is bordered by I-80 ROW to the north, by Former 120<sup>th</sup> Street ROW to the east, by a farmstead and cropland to the west, and by Giles Road ROW to the south. South 126<sup>th</sup> Street ROW crosses through the assessment from northwest to southeast. Harrison Street ROW crosses through the northeast corner of the assessment site. Beyond I-80 to the northwest are residential development, vacant land, and Attic Storage. Farther north are Harrison Street and the Millard Municipal Airport. Farther north of the northeast corner of the assessment site are Harry Anderson Road and Oak Hills golf course. Cropland, wooded land, West Papillion Creek and Union Pacific Railroad tracks are east of Former 120<sup>th</sup> Street. A wooded area is east of the southeast part of the site. South of Giles Road ROW to the south is cropland. A cellular antenna tower and equipment building are adjacent south of the southeast corner of the assessment site across Giles Road. Farther south are Burlington Northern/Missouri Railroad tracks and South Papillion Creek. West of the assessment site, beyond the farmstead and cropland was I-80 ROW.

In the 1970 aerial photograph (Photobase for the 1973 Soil Survey Map), the assessment site and surrounding properties appear to be in agricultural use. A farmstead is present in the north central part of the assessment site. Millard Airport and residential development are evident to the north.

In the 1973 aerial photograph, the structures previously observed at the farmstead are no longer evident. The remainder of the assessment site and surrounding areas appear relatively unchanged.

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In the 1982 aerial photograph, the assessment site and nearby surrounding properties appear to be relatively unchanged in use. Residential development has expanded south from Millard and is evident nearby northwest of the site.

In the 1994 aerial photograph, the assessment site and surrounding properties appear under preliminary development. South 120<sup>th</sup> Street has been abandoned. A new I-80 interchange is present along the northwest side of the assessment site. South 126<sup>th</sup> Street is present crossing through the center of the assessment site. Harrison Street is evident crossing through the northeast corner of the site. Surrounding areas appear relatively unchanged.

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### 3.0 RECORDS REVIEW

As part of this ESA, various sources of information were queried in an attempt to determine and evaluate past and present activities on and in the vicinity of the subject property that might cause environmental impacts on the subject site. Multiple aerial photographs and the current USGS Topographic Map were obtained, and regulatory database research by Environmental Data Resources, Inc. (EDR) was performed. EDR is a database search firm, specializing in Records Searches for ESA's. These efforts were performed in general accordance with ASTM Standard E 1527-97. The ASTM Standard recommends approximate minimum search distances (AMSDs) for each type of database search, which are stated below, and were utilized in our review. The AMSDs recommended by ASTM are included on the Site Information Map included in the Appendix.

The following databases/lists were requested and reviewed by TG:

United States Environmental Protection Agency (USEPA) Office of Solid Waste and Emergency Response, National Priorities List, (commonly referred to as "Superfund List"), AMSD—1.0 mile;

Resource Conservation and Recovery Information System (RCRIS) Treatment, Storage and Disposal (RCRIS-TSD) Facilities, AMSD—0.5 mile;

USEPA Office of Solid Waste and Emergency Response, Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) List, AMSD—0.5 mile;

USEPA Office of Solid Waste and Emergency Response, No Further Remedial Action Planned Sites (NFRAP) List, AMSD—0.5 mile;

RCRIS Large Quantity Generators (RCRIS-LgGen) List, AMSD--property and adjoining properties;

RCRIS Small Quantity Generators (RCRIS-SmGen) List, AMSD--property and adjoining properties;

Emergency Response Notification System (ERNS) List, AMSD--property only;

Nebraska Hazardous Waste Sites Report Sites (HWS) List, AMSD—1.0 mile;

Nebraska Leaking Underground Storage Tank (LUST) Report, AMSD—0.5 mile;

Nebraska Underground Storage Tank (UST) Report, AMSD--property and adjoining properties.

Nebraska Permitted Landfill List (SWLF), AMSD—0.5 mile;

Handwritten signature/initials.

### 3.1 ENVIRONMENTAL RECORDS REVIEW

The results of the review of the above described lists is as follows:

- No NPL or "Superfund" sites were identified within 1.0 mile;
- No RCRA-TSD sites were identified within 0.5 mile;
- No CERCLIS sites were identified within 0.5 mile;
- No NFRAP sites were identified within 0.5 mile;
- No RCRA LgGen were identified on the property or adjoining properties;
- No RCRA SmGen were identified within 0.5 mile;
- The property was not listed on the ERNS List;
- No HWS sites were identified within 1 mile;
- One (1) LUST site was identified within 0.5 mile;
- No UST sites were identified within 0.25 mile;
- No Permitted Landfills were identified within 0.5 mile;

The location of the sites discussed above, as well as 0.25, 0.50 mile, and 1 mile AMSD's (radius) are shown on the Site Information Map, attached in the Appendix.

The sites identified above are listed by name and address below and are discussed in the following paragraphs. The sites are described as follows:

MAP ID	NAME	LOCATION	LIST(S)
5	Vetter Health Service	12614 Sky Park Drive	LUST

Vetter Health Service, 12614 Sky Park Drive, Omaha, Nebraska 68137. This address is located approximately 0.5 of a mile north of the assessment site. This site is currently on the LUST list. The facility status is reported as "No Further Action." Therefore, it does not appear that this property represents a significant environmental risk to the assessment site.

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### 3.2 TOPOGRAPHIC INFORMATION AND PHYSICAL SETTING

As shown on the updated USGS 7.5 Minute Topographic Map, Ralston, Nebraska Quadrangle, a portion of which is included in the Appendix, the site elevation is approximately 1,050 to 1,150 feet above mean sea level (MSL). The scale of this map is 1" = 2,000' and has a contour interval of 10 feet. The topographic map shows the native topography of the site to be moderately sloping east and south with approximately 100 feet of relief. Recent earth moving activities have created a more level topography suitable for building. A site specific topographic survey was not available at the time of this report. The Topographic Map also indicated that a pit was located near the north central part of the site. There was no pit noted during the site reconnaissance and it appears it was graded over during construction of the I-80/126<sup>th</sup> Street interchange.

Based on the topography and surface water flow directions observed during the site reconnaissance, we anticipate that the majority of the site-specific ground water flow direction is to the east and south toward West Papillion Creek from the eastern part of the assessment site, and towards South Papillion Creek for the remainder of the site. The overall regional ground water flow direction in the vicinity of the property is reported to be to the southeast toward southwestward flowing West Papillion and South Papillion Creeks. Depth to ground water is anticipated to be approximately 40 feet below ground level.

Based on the topography and anticipated site-specific ground water flow direction, we anticipate that the area within a half mile northwest would be in the up-gradient direction. Therefore, this anticipated up-gradient source area has been the focus of our historical and environmental records research.

The assessment site surface soils were mapped by the United States Department of Agriculture (USDA) and described in the *Soil Survey of Douglas and Sarpy Counties, Nebraska*. Surface soils mapped at the assessment site are Marshall and Ponca Series soils. The Marshall series consists of deep, well-drained, nearly level to moderately steep soils on uplands. These soils formed in loess. The Marshall and Ponca complex soils are found on the sides of entrenched drainageways in the uplands. Permeability in these soils is moderate and available water capacity is high. A copy of the Soil Survey Map and soil descriptions have been included in the Appendix.

Additional information about the site can be found in Section 2.0 "Site Description."



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### 3.3 HISTORICAL USE AND OWNERSHIP

Complete title search or chain-of-title documentation was not available for review at the time of this Report. A review of aerial photographs from 1970 (Photobase for the Soil Survey Map), 1973, 1982, and 1994 was performed. City Directories were not reviewed as the property lies outside City of Omaha boundaries and observations from the site reconnaissance did not suggest previous development. Based upon the aerial photographs and the topographic map, it appears that the site was vacant from at least 1970 until development of the present preliminary commercial development. No other use or development was revealed through review of aerial photographs, topographic map, or site reconnaissance and, it is assumed, that the site did not incur any development between the dates of the aerial photographs.

Portions of the 1970 (Soil Survey Map), 1973, 1982, and 1994 aerial photographs have been reproduced and are included in the Appendix.

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## 4.0 SITE RECONNAISSANCE

The site reconnaissance was performed on March 28 and 29, 2000. Current use and condition of the property and adjoining nearby properties was noted, as well as information on land use in the vicinity.

The native topography of the assessment site has been graded level over the majority of the sight with the exception of remnants of the areas of high topography located in the north central and south western parts of the assessment site. In general, the elevation highs are along the northwest and west borders of the property while the elevation lows are located along the south and east borders. Surface drainage of the site is anticipated to be southeast toward South Papillion and West Papillion Creeks.

A walk through was conducted of the site. There were no structures observed on site during the site reconnaissance. The majority of the site was in crop stubble. Unimproved and gravel roads are evident on site where the site has been accessed for grading and other preliminary development activities. Mounds of vegetated soil were observed in several areas on site. These mounds appeared to contain only small amounts of construction debris and road litter, and were composed primarily of cleared timber, brush, and soil. There were numerous gullies and drainageways observed on site. In general, these areas were clear and did not contain much household debris or road litter. The ridge of high topography in the north central part of the assessment site contained flag markers indicating the presence of an subsurface ATT utility cable. A pile of concrete debris was noted in the central part of the site, west of 126<sup>th</sup> Street.

In general, the site appeared void of previous development and transient habitation. Indicators of adverse environmental conditions were not observed at the assessment site during the site reconnaissance.

Adjoining property uses are listed below:

North – I-80 ROW .

East – Former 120<sup>th</sup> Street ROW.

South – Giles Road ROW.

West – A farmstead and agricultural cropland.

Visual observations from the perimeter of the site and public thoroughfares were made of the surrounding vicinity. Land uses observed in the vicinity include the following:

North - north of the assessment site, beyond the I-80 ROW was Attic Storage, vacant land, and residential development. Harrison Street and Millard Municipal Airport were farther

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north. North of the northeast corner of the assessment was Harry Anderson Road and Oak Hills Golf Course.

East - east of the assessment site, beyond the Former 120<sup>th</sup> Street ROW was wooded land, cropland, West Papillion Creek, and Union Pacific Railroad tracks.

South - south of the assessment site, beyond the Giles Road ROW was agricultural cropland. A cellular antenna tower and equipment building were adjacent south of the southeast corner of the assessment site across Giles Road. Farther south were Burlington Northern/Missouri Railroad tracks and South Papillion Creek.

West - west of the assessment site, beyond the farmstead and cropland was I-80 ROW.

No other relevant observations were made during the site visit regarding current or past uses of the property, adjoining, or land in the vicinity.

Copies of photographs taken during the site reconnaissance conducted on March 28, 2000, have been included in the Appendix and represent the condition of the site on that day.

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## 5.0 FINDINGS AND RECOMMENDATIONS

The following are the findings and recommendations for the Phase I Environmental Site Assessment (ESA) conducted by Thiele Geotech, Inc. (TG) for RS Land Co. (Client) on the subject site:

**Site Description** - The assessment site is located 126<sup>th</sup> Street and Giles Road, Omaha, Nebraska, 68138. The assessment site consists of approximately 200 acres of land in a generally triangular parcel. This site currently is undergoing preliminary development activities.

**Historical Review** - Readily available historical documents were reviewed to determine historical utilization of the assessment site and surrounding properties. Readily available historical documents reviewed for this assessment were 1970 (Soil Survey Map), 1973, 1982, and 1994 aerial photographs of the site and neighboring properties. A review of these maps indicated the site and neighboring properties were agricultural land and a farmstead prior development. Between 1970 and 1994 residential subdivisions were constructed to the west of the site and road right-of-ways were expanded around the site.

Based upon a review of these historical documents, there appears to be a low risk for adverse environmental impact to the assessment site from itself and neighboring properties.

**Regulatory Review** - One (1) site (plottable) was identified by EDR, a regulatory database search firm on the LUST. This sites were located approximately 0.5 of a mile from the assessment site to the north of the subject property.

EDR reported that one (1) site was listed on the LUST list indicating that a releases from an underground storage tank at this site had been reported to the Nebraska Department of Environmental Quality (NDEQ). Based on information reviewed for this site, it does not appear that this site is a significant environmental risk to the assessment site.

Based upon the above paragraphs discussing the sites identified by the regulatory review, a low risk for adverse environmental impact was determined based on review of regulatory records.

**Site Reconnaissance** - There were no structures observed at the assessment site. The current use and condition of the assessment site and adjacent properties suggest that conditions of environmental concern do not exist at the assessment site. Therefore, a low risk for adverse environmental impact to the site from itself or neighboring properties was determined based on the observations made during the site reconnaissance conducted on March 28, 2000.

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**Recommendations** - There do not appear to be any other recognized environmental conditions on the subject property, based upon the results of this ESA. Therefore, no further investigation is recommended.

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## **6.0 LIMITATIONS**

This ESA is an instrument of service for the exclusive use of RS Land Co. (Client) and their lender(s) only. No third party may use this report, or any information contained herein. With the permission of the Client, Thiele Geotech, Inc. (TG) may authorize a third party to use this Report, and to rely on the information contained in this report, but only to the same extent of the Client's reliance, and subject to the same contractual, technological, and other limitations to which the Client has agreed.

Findings and recommendations of this ESA are based upon information obtained during the performance of this ESA and the conditions existing at the site on the date of the site reconnaissance. Past conditions, uses, etc., were approximated based on available records and observations.

No sampling or testing of soil, water, air or other materials was conducted as part of this ESA. It is possible that contamination may exist, but was undetected by this ESA. The recommendations provided in an ESA do not guarantee that environmental conditions will not arise in the future. The intent of an ESA "is to identify, to the extent feasible pursuant to the processes prescribed herein, recognized environmental conditions in connection with the property."<sup>4</sup>

The results of this Report are based on information obtained by TG, and on observations made during the site reconnaissance. TG does not warrant or guarantee the environmental condition of the subject property, or certify the property as clean.

This Report is based on the current regulatory environment and current regulations and guidance. Regulatory agency interpretations, future regulatory changes, and/or policy, guidance or regulatory attitude changes may affect the environmental status of the site.

No asbestos, asbestos-containing materials (ACM), lead-based paint (LBP), radon, methane gas, or wetland identification/delineation efforts were performed as part of this ESA.

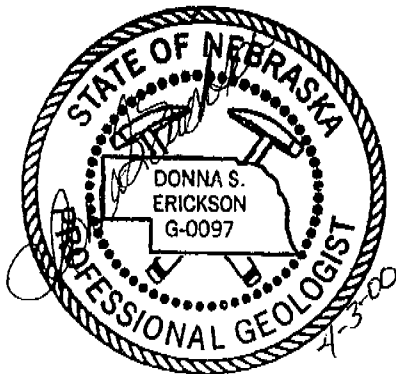
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<sup>4</sup>ASTM Standard E 1527-97, p.9

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## 7.0 CERTIFICATION AND SIGNATURE

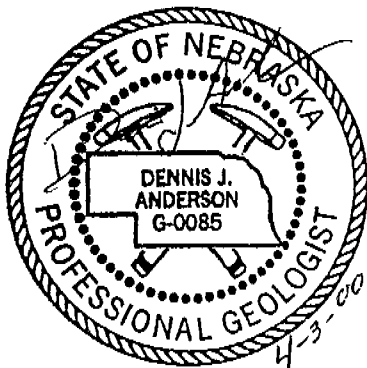
I certify that this document was prepared by me or under my direct personal supervision and that I am a Professional Geologist as licensed by the State of Nebraska Board of Geologists.



Respectfully submitted,  
Thiele Geotech, Inc.

Prepared by,

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