

Security

97-06807

FILED SAKPI CO. NE.  
INSTRUMENT NUMBER  
97-006807  
97 APR 11 AM 11:26  
*Glenn J. [Signature]*  
REGISTER OF DEEDS

Counter *116*  
Verify: *[Signature]*  
D.E.: *[Signature]*  
Proof: *[Signature]*  
Fee: *76.00*  
Ck ☐  
Cash ☐  
Charge ☐

**DEED OF TRUST AND SECURITY AGREEMENT**

**THIS DEED OF TRUST** is made this 31<sup>st</sup> day of March, 1997 by and between T.C.K. DEVELOPMENT, INC., a Nebraska corporation (hereinafter called "Trustor") whose mailing address is 5004 South 110th Street, Omaha, NE 68137, and First American Title Insurance Company c/o Security Land Title Company, Commercial Division, (hereinafter called "Trustee") whose mailing address is 13304 West Center Road, Omaha, Nebraska 68144, and **THE SECURITY MUTUAL LIFE INSURANCE COMPANY OF LINCOLN, NEBRASKA**, (hereinafter called "Beneficiary") whose mailing address is Post Office Box 82248, Lincoln, Nebraska 68501-2248.

**WITNESSETH:**

**WHEREAS**, Trustor is indebted to Beneficiary in the principal sum of Three Hundred Forty Thousand and 00/100 Dollars (\$340,000.00) which indebtedness is evidenced by Trustor's Promissory Note dated of even date herewith (hereinafter called the "Note"), payable to the order of Beneficiary and having a maturity date of May 1, 2012.

**NOW THEREFORE**, for the purpose of securing:

- (a) payment of the Note, together with interest thereon, late charges, prepayment penalties, premiums, or fees, default fees, any future advances, and all extensions, modifications, substitutions and renewals thereof,
- (b) payment of all other sums, fees or charges, together with interest thereon, advanced to protect the security of this Deed of Trust or the property secured hereby and the performance of the covenants and agreements of Trustor, whether or not set forth herein,
- (c) performance, discharge of and compliance with every term, covenant, obligation and agreement of Trustor contained herein or incorporated by reference or any other security instrument, document or agreement at any time given to secure the Note, and
- (d) repayment of all other sums or future advances, with interest thereon, which may heretofore have been or hereafter be advanced by Beneficiary to Trustor or Trustor's successor in interest or title,

all of which is hereinafter collectively called the "Indebtedness". Trustor irrevocably grants, transfers and conveys to Trustee, in trust, WITH POWER OF SALE, the real estate described on Exhibit "A" attached hereto and incorporated by this reference, together with (i) all buildings, structures, additions, enlargements, modifications, repairs, replacements, and improvements now or hereafter located thereon. (ii) all equipment, machinery and fixtures (including, without limitation, all lighting, heating, ventilating, cooling, air conditioning, sprinkling and plumbing fixtures, water and power systems,

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engines, boilers, ranges, ovens, dishwashers, mirrors and mantels, carpeting, furnaces, oil burners, elevators and motors, refrigeration plants or units, communication systems, dynamos, transformers, electrical equipment, storm and screen windows, doors, awnings and shades) now or hereafter attached to, or built in, any building or improvement now or hereafter located thereon, (iii) all easements and rights of way appurtenant thereof, (iv) all leasehold estate, right, title and interest of Trustor in and to all leases, whether now or hereafter existing or entered into (including, without limitation, all cash and security deposits, advance rentals and deposits or payments of a similar nature) pertaining thereto, (v) all rents, issues, profits and income therefrom (subject to the right of Trustor to collect and apply such rents, issues, profits and income as they become due and payable so long as no Event of Default (as hereafter defined) exists hereunder), (vi) all royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, (vii) all tenements, hereditaments, privileges and appurtenances belonging, used or enjoyed in connection therewith, and (viii) all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance and condemnation awards), all of which is hereinafter collectively called the "Trust Property".

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR  
COVENANTS AND AGREES AS FOLLOWS:**

1. **Title.** Trustor covenants, warrants and agrees with Beneficiary, its successors and assigns, that Trustor owns the Trust Property free from any prior lien or encumbrance (except for the lien of real estate taxes not yet delinquent), that this Deed of Trust is and will remain a valid and enforceable first lien on the Trust Property (except for the lien of real estate taxes not yet delinquent), that Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a first and paramount lien upon the Trust Property and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Trustor, at its expense, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to time. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be required by Beneficiary. Trustor hereby relinquishes all right of dower and homestead in and to the Trust Property.

2. **Payment of Indebtedness.** Trustor shall punctually pay the principal of and interest on the Indebtedness secured hereby.

3. **Construction of Improvements.** Trustor shall complete in good and workmanlike manner any buildings, improvements or repairs relating thereto which may be hereafter commenced upon or to the Trust Property or contemplated by the loan evidenced by the Note secured hereby, to pay when due all costs and liabilities incurred therefore, and not to permit any construction liens against the Trust Property. In the event construction of buildings, improvements or repairs are commenced, Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding; (a) to promptly commence

any such work and to complete the proposed improvements promptly. (b) to complete the same in accordance with such plans and specifications as shall be approved by Beneficiary, (c) to allow Beneficiary to inspect the Trust Property at all times during construction, and (d) to replace any materials or work unsatisfactory to Beneficiary within fifteen (15) days after written notice from Beneficiary of such fact.

**4. Funds for Payment of Charges.** Trustor shall pay to Beneficiary on the first day of each month, or such other date each month as may be specified by Beneficiary, until the Indebtedness is paid in full, a sum (hereinafter called the "Funds") equal to one-twelfth (1/12th) of the yearly taxes and assessments which may attain priority over this Deed of Trust, plus one-twelfth (1/12th) of the yearly premium installments for hazard insurance, all as reasonably estimated initially and from time to time by Beneficiary on the basis of assessments and bills and reasonable estimates thereof. The Funds shall be held in an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. Beneficiary shall apply the Funds to pay said taxes, assessments and insurance premiums. Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds. The Funds are hereby pledged as additional security for the Indebtedness secured by this Deed of Trust. If the amount of the Funds held by Beneficiary, together with the future monthly installments of the Funds payable prior to the due dates of taxes, assessments and insurance premiums, shall exceed the amount required to pay said taxes, assessments and insurance premiums as they fall due, such excess shall be credited to Trustor against future monthly installments of Funds. If the amount of the Funds held by Beneficiary shall not be sufficient to pay taxes, assessments and insurance premiums as they fall due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days from the date notice is mailed by Beneficiary to Trustor requesting payment thereof. Upon payment in full of all Indebtedness, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary. If the Trust Property is foreclosed by Beneficiary or the Trust Property is otherwise acquired by Beneficiary, Beneficiary shall apply, immediately prior to the sale of the Trust Property or its acquisition by Beneficiary, any Funds held by Beneficiary at the time of application as a credit against the Indebtedness. Notwithstanding the foregoing, and without waiving its right to the future enforcement of the escrow provisions set forth in this paragraph, the Beneficiary will permit the Trustor to pay directly all real estate taxes, hazard insurance premiums (as required by Paragraph No. 7) and special assessments, so long as (a) no Event of Default shall exist hereunder, and (b) evidence satisfactory to the Beneficiary is provided to the Beneficiary by the Trustor that such insurance premiums, real estate taxes and special assessments are paid on or before their due date, and (c) there is no change in the ownership of the Property.

**5. Application of Payments.** All payments received by Beneficiary as to any debt, liability or obligation owed to Beneficiary by Trustor may be applied by Beneficiary to the payment of the Indebtedness or to any such other debt, liability or obligation, in any order or manner of application which Beneficiary, in its absolute discretion, deems appropriate.

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6. **Charges/Liens.** Trustor will keep the Trust Property free from all charges, liens and encumbrances, whether consensual, statutory, voluntary or involuntary (other than the lien created by this Deed of Trust or any other instrument, document or agreement given to Beneficiary contemporaneously herewith as security for the Indebtedness), and whether superior or inferior to this Deed of Trust, excluding however, any lien for nondelinquent real estate taxes or nondelinquent special assessments.

7. **Hazard and Other Insurance.** Trustor shall keep the buildings and other improvements now existing or hereafter erected on the Trust Property insured by insurance carriers satisfactory to Beneficiary against loss by and abatement of rental income from, fire, hazards included in the term "extended coverage", vandalism, and malicious mischief, and such other hazards, casualties and contingencies as may be required by Beneficiary, in such amounts and for such periods of time as may be reasonably required by Beneficiary. The policy or policies of insurance shall be in form acceptable to Beneficiary, provide that the same may not be modified without thirty (30) days prior written notice to Beneficiary, and shall have non-contributing loss payable provisions in favor of and in form acceptable to Beneficiary, entitling Beneficiary to collect any and all proceeds payable under such insurance policies. Business interruption or loss of rental income insurance required to be carried pursuant to this Paragraph 7 shall be in an amount equal to at least six (6) months aggregate gross scheduled rents from the Trust Property. All premiums on insurance policies shall be paid in the manner provided under Paragraph 4 hereof, or if the payment of the Funds has been waived by Beneficiary, by Trustor making payment at least thirty (30) days prior to the due date, directly to the insurance carrier. Beneficiary shall have the right to hold the policies and renewals thereof and Trustor shall promptly furnish to Beneficiary all renewal notices and all paid premiums receipts received by Trustor. In no event shall Beneficiary or Trustee be held responsible for any loss or damage arising out of a defect in any policy or arising out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Trustor to effect the insurance required hereunder. Beneficiary and Trustee shall not be held responsible for failure to pay any insurance premiums; provided, in the event Beneficiary is collecting Funds for the payment of insurance premiums pursuant to Paragraph 4 above, Beneficiary shall be held responsible for its own gross negligence or willful misconduct in connection with its disbursement of Funds for the payment of insurance premiums. In the event of loss, Trustor shall give prompt notice by mail to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly or in proper form by Trustor. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to Beneficiary as additional security for the payment of the Indebtedness. In the event of Beneficiary's exercise of the power of sale contained herein, or in the event of foreclosure, all right, title and interest of Trustor in and to any insurance policy then in force shall pass to the purchaser at the trustee's sale or foreclosure sale. In case of any loss, the insurance proceeds may, at the option of Beneficiary, be applied by Beneficiary upon the Indebtedness, or any part thereof, and in such order and amount as Beneficiary may determine; or said insurance proceeds may, at the option of Beneficiary, either be used in replacing or restoring the Trust Property partially or totally destroyed to a condition satisfactory to Beneficiary; or said insurance proceeds or any portion thereof may, at the option of Beneficiary, be released to Trustor. Unless Beneficiary and Trustor otherwise agree in writing, any such application of

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insurance proceeds shall not extend or postpone the due date of the Note, or any installments called for therein, or change the amount of such instalments. If the Trust Property is acquired by Beneficiary pursuant to the exercise of the power of sale or other foreclosure, all right, title and interest of Trustor in and to any insurance proceeds payable as a result of damage to the Trust Property prior to the sale or acquisition shall pass to Beneficiary and shall be applied first to the costs and expenses, including attorney fees, incurred in collecting such proceeds, then in the manner and in the order provided in this Deed of Trust.

**8. Preservation and Maintenance of Trust Property.** Trustor will keep the buildings and other improvements now or hereafter erected on or constituting the Trust Property in good repair and condition and will not commit or permit waste, will not alter the design or structural character of any building now or hereafter erected on or constituting the Trust Property without the prior written consent of Beneficiary, will not do any act or thing which would unduly impair or depreciate the value of the Trust Property and will not abandon the Trust Property. Trustor will not remove any fixtures constituting the Trust Property unless the same are immediately replaced with like property subject to the lien and security interest of this Deed of Trust and of at least equal value and utility. Trustor will comply with all present and future ordinances, regulations and requirements of any governmental body which are applicable to the Trust Property and to the occupancy and use thereof.

**9. Inspection.** Beneficiary or its agent may, at all reasonable times, enter upon the Trust Property for the purpose of inspection. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it makes or fails to make any such inspection.

**10. Protection of Security.** If Trustor fails to perform any of the covenants and agreements contained in this Deed of Trust, or if any action of proceeding is commenced which does or may adversely affect the Trust Property or the interest of Trustor or Beneficiary therein or the title of Trustor thereto, then Beneficiary, at its option, after fifteen (15) days written notice to the Trustor, may perform such covenants and agreements, make such appearances, defend against and investigate such action or proceeding and take such other action as Beneficiary deems necessary to protect its interest including, but not limited to, disbursement of reasonable attorney fees and entry upon the Trust Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this Paragraph 10, with interest thereon, shall constitute Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon demand from Beneficiary to Trustor, and shall bear interest from the date of disbursement at the default rate, if any, set forth in the Note, or otherwise at the highest rate permitted by law. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Trustor irrevocably authorizes and empowers Beneficiary to enter upon the Trust Property as Trustor's agent and, in Trustor's name or otherwise, to perform any and all covenants and agreements to be performed by Trustor as herein provided. Beneficiary shall, at its option be subrogated to any encumbrance, lien, claim or demand and to all rights and securities for the payment thereof paid or discharged by Beneficiary under the provisions

hereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust

**11. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Trust Property, or any part thereof, or for conveyance in lieu of or in anticipation of condemnation, are hereby assigned to and shall be paid to Beneficiary. Beneficiary shall not be entitled to condemnation proceeds payable to tenants for damages to their personal property which is not part of the Trust Property. Trustor will file and prosecute, in good faith and with due diligence, its claim for any such award or payment, and will cause the same to be collected and paid to Beneficiary, and, should it fail to do so, Trustor irrevocably authorizes and empowers Beneficiary, in the name of Trustor or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the proceeds. If the Trust Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within thirty (30) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds in the manner indicated herein. The proceeds of any award or claim may, after deducting all reasonable costs and expenses, including attorney fees, which may have been incurred by Beneficiary in the collection thereof, at the sole discretion of Beneficiary, be released to Trustor, applied to restoration of the Trust Property, or applied to the payment of the Indebtedness. Unless Beneficiary and Trustor otherwise agree in writing, any such application of proceeds to Indebtedness shall not exceed or postpone the due date of the Note or the payment of any installments called for thereunder.

**12. Trustor Not Released.** Extension of the time for payment or modification of any amortization of the Indebtedness granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor or Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the Indebtedness by reason of any demand made by Trustor or Trustor's successors in interest.

**13. Financial Information.** Trustor will provide, or cause to be provided, to Beneficiary within ninety (90) days of the close of each fiscal year of Trustor, a detailed income and expense statement for the Trust Property, certified by the president of the Trustor; and Trustor shall additionally provide and deliver to Beneficiary such other financial information and in such form as Beneficiary may request from time to time, including the furnishing of a duly acknowledged written statement by Trustor within five (5) days after demand therefor of the amount due on the Note secured hereby and whether any offsets or defenses exist against the same.

**14. Financial Covenants.** Trustor covenants and represents that, as of the date hereof, total annualized income from the rental of the Trust Property is not less than

**15. Schedule of Leases.** Within ten (10) days after demand, Trustor shall furnish to Beneficiary a schedule, certified to by Trustor, setting forth all leases of the

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Trust Property, or any portion thereof, including in each case, the name of the tenants or occupants, a description of the space occupied by such tenant or occupant, the rental payable for such space, and such other information and documents with respect to such leases and tenancies as Beneficiary may reasonably request.

**16. Covenants of Trustor with Respect to Leases.** Without the prior written consent of Beneficiary, Trustor shall not, directly or indirectly, with respect to any lease of the Trust Property, or any portion thereof, whether such lease is now or hereafter in existence:

- (a) hereafter, enter into any lease or occupancy agreement of the Trust Property, or any portion thereof, without the prior written consent of Beneficiary, when the annual per square foot rental for the premises is less than the annual per square foot rental under the lease for such premises in effect as of the date of this Deed of Trust (and this Deed of Trust shall be notice to all potential lessees or occupants that any attempted lease or occupancy agreement in violation of this subparagraph No. 16(a) without Beneficiary's prior written consent shall be null and void and without force or effect);
- (b) accept or permit any prepayment, discount or advance payment of rent hereunder in excess of one (1) month; or
- (c) amend or modify any lease so as to reduce the rental payable thereunder;
- (d) waive any default thereunder or breach thereof;
- (e) give any consent, waiver or approval thereunder or take any other action in connection therewith, or with a lessee thereunder, which would have the effect of impairing the value of the lessor's interest thereunder or the property subject thereto, or of impairing the position or interest of Beneficiary therein; or
- (f) sell, assign, pledge, mortgage or otherwise dispose of, or encumber its interest in any lease or any rents, issues, profits issuing or arising thereunder (other than to Beneficiary).

**17. Waiver of Statute of Limitations.** Time is of the essence in all of Trustor's obligations and duties hereunder; and to the extent permitted by law, Trustor waives all present or future statutes of limitations with respect to any debt, demand or obligation secured hereby and any action or proceeding for the purpose of enforcing this Deed of Trust or any rights or remedies contained herein.

**18. Assignment of Deposits.** In the event construction of improvements in or upon the Trust Property is hereafter undertaken, Trustor hereby transfers and assigns to Beneficiary, as additional security for the Indebtedness, all right, title and interest to any

and all monies deposited by or on behalf of Trustor with any city, county, public body or agency, sanitary district, utility company, and any other body or agency, for the installation or to secure the installation of any utility or improvement by Trustor, pertaining to the Trust Property.

**19. Forbearance by Beneficiary Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or the discharge of liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the Indebtedness.

**20. Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

**21. Successors and Assigns Bound: Joint and Several Liability: Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary, Trustee and Trustor. All covenants and agreements of Trustor shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**22. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail, return receipt requested, addressed to Trustor at its mailing address set forth above or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary or Trustee shall be given by certified mail, return receipt requested, to Beneficiary's and Trustee's mailing addresses set forth above, or to such other addresses as Beneficiary or Trustee may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor, Beneficiary or Trustee when given in the manner designated herein.

**23. Governing Law: Severability.** This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions and to this end the provisions of this Deed of Trust are declared to be severable.

**24. Hazardous or Toxic Substances.** Trustor represents, warrants and covenants to Beneficiary and Trustee as follows:

- (a) To the best of Trustor's knowledge, no hazardous or toxic substances, within the meaning of any applicable statute or regulation, are presently stored or otherwise located on the Trust Property, and further within the definition of such statutes, no part of



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the Trust Property, including the ground water located thereon, is presently contaminated by any such substance.

- (b) Neither Trustor nor any other tenant of the Trust Property shall generate, utilize, store, handle, or otherwise deal with, any hazardous, harmful, toxic or noxious waste, substance or material, or any oil in, or upon, the Trust Property.
- (c) Trustor shall promptly notify Beneficiary as soon as Trustor knows or suspects that a toxic or hazardous substance has been released on the Trust Property.
- (d) Trustor does hereby indemnify and hold Beneficiary and Trustee harmless of and from all loss, cost (including reasonable attorney fees), liability and damage whatsoever incurred by Beneficiary or Trustee by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs (or may have occurred) upon the Trust Property, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation, and including, but not limited to, any such instance or instances in which Beneficiary or Trustee is strictly liable under any such statute or regulation. The indemnification herein provided by Trustor to Beneficiary and Trustee shall continue in full force and effect indefinitely and shall survive the disbursement of the proceeds of the Note, any prepayment of the Indebtedness, any reconveyance of the Trust Property by Trustee, and/or any foreclosure (whether judicially or pursuant to the power of sale granted herein) or deed in lieu of foreclosure of the Trust Property.

**25. Events of Default.** Each of the following occurrences shall constitute an event of default hereunder (hereinafter called an "Event of Default"):

- (a) Trustor shall fail to pay when due any principal, interest, or principal and interest on the Indebtedness, or any part thereof, and such failure shall continue for a period of ten (10) days after written notice to Trustor;
- (b) Any warranty of title made by Trustor herein shall be untrue;
- (c) Trustor shall fail to observe or perform any of the covenants, agreements or conditions in this Deed of Trust and such failure shall continue for a period of thirty (30) days after written notice from Beneficiary to Trustor;

- (d) Any representation or warranty made by Trustor on any financial statements or reports heretofore or hereafter submitted to Beneficiary by or on behalf of Trustor shall prove false or materially misleading;
- (e) Trustor shall fail to perform or observe any of the covenants, conditions or agreements contained in, or binding upon Trustor under, or any event of default shall occur under (and as defined in) any security agreement, loan agreement, financing statement, or any other agreement, instrument or document executed by Trustor in connection with the loan evidenced by the Note and such failure or event shall continue for a period of thirty (30) days after written notice from Beneficiary to Trustor;
- (f) A trustee, receiver or liquidator of the Trust Property or of Trustor shall be appointed, or any of the creditors of Trustor shall file a petition in bankruptcy against Trustor, or for the reorganization of Trustor pursuant to the United States Bankruptcy Code, or any similar law, whether federal or state, and if such order or petition shall not be discharged or dismissed within thirty (30) days after the date on which such order or petition was filed;
- (g) Trustor shall file a petition pursuant to the United States Bankruptcy Code or any similar law, federal or state, or if Trustor shall be adjudged bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall consent to the appointment of a receiver of all or any part of the Trust Property;
- (h) Final judgment for the payment of money shall be rendered against Trustor and Trustor shall not discharge the same, or cause it to be discharged, within thirty (30) days after the entry thereof, or shall not appeal therefrom or from the order, decree of process upon which or pursuant to which said judgment was granted, based, or entered, and secure a stay of execution pending such appeal; or
- (i) Except as otherwise specifically permitted herein, Trustor shall sell, convey, transfer, encumber, or otherwise dispose of the Trust Property, or any part thereof, or any interest therein, or shall be divested of its title, or any interest therein, in any manner or way, whether voluntarily or involuntarily, including, but not limited to, a transfer of any of the Trustor's interest in the Trust Property in the form of a Lease Option, Option to Purchase, Sale Contract, Limited Partnership, Corporation, Mortgage, Deed of Trust or Deed.

Notwithstanding the provisions of subparagraph (i) above, but on the condition that: (A) no Event of Default (or event which, with the giving of notice and/or expiration of any cure period would constitute an Event of Default) shall exist hereunder, (B) any grantee or

transferee of the Trust Property shall assume in writing all of the obligations of Trustor hereunder and under the Note, (C) Beneficiary shall be provided with all copies of documentation relating to such sale or transfer, all in form acceptable to Beneficiary, (D) Trustor shall not be released or discharged of any act of Trustor's duties, obligations, liabilities and responsibilities hereunder or under the Note, and (E) the prior written consent of the Beneficiary is obtained, the Trustor shall have the right to convey and transfer all (but not less than all) of the Trust Property to the grantee or transferee approved in writing by the Beneficiary upon receipt by the Beneficiary of an amount equal to one percent (1%) of the then principal Note balance and fulfillment of the above conditions.

**26. Acceleration of Debt: Foreclosure.** Upon the occurrence of any Event of Default, or any time thereafter, Beneficiary may, at its option, declare all the Indebtedness secured hereby immediately due and payable and the same shall thereupon bear interest at the default rate, if any, set forth in the Note, or otherwise at the highest rate permitted by law, and, irrespective of whether Beneficiary exercises said 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:

- (a) Beneficiary may enter upon, take possession of, manage and operate the Trust Property or any part thereof, make repairs and alterations and do any acts which Beneficiary deems proper to protect the security thereof, 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 apply the same, less costs and expenses of operation and collection, including reasonable attorney fees and Beneficiary's costs, upon the Indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and shall make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust 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 or notice of sale hereunder or invalidate any act done pursuant to any such notice. 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 an Event of 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 may determine without regard to the adequacy of any security for the Indebtedness secured hereby.
- (b) Beneficiary shall, without regard to the adequacy of any security for the Indebtedness secured hereby, be entitled to the appointment of a receiver by any court having jurisdiction, to take possession of,

protect and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom.

- (c) Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.
- (d) Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give notice of default and notice of sale as may be then required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the price bid, Trustee shall apply the proceeds in the following order: (i) to the costs and expenses of exercising the power of sale and of the sale, including but not limited to, trustee's fees of not more than Five Hundred Dollars (\$500) plus one-half (1/2) of one percent (1%) of the gross sale price, and reasonable attorney fees, (ii) to the Indebtedness, and (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, attorney fees and court costs (to the extent allowed by law), shall be and constitute Indebtedness secured hereby.

**27. Duties of Trustee.** Trustor agrees that:

- (a) The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee;
- (b) No provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers;
- (c) Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon; and

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- (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within its discretion or rights or powers conferred upon it by this Deed of Trust

**28. Security Agreement and Fixture Filing.** This Deed of Trust shall constitute a security agreement and, after recording, shall be effective as a financing statement filed as a fixture filing under the Nebraska Uniform Commercial Code with respect to all goods constituting a part of the Trust Property which are or are to become fixtures related to the real estate described herein, together with all substitutions and replacements therefor and all other property of Trustor, either similar or dissimilar to the same, together with all proceeds thereof. For this purpose, the following information is provided:

- (a) Name and address of Debtor:

T.C.K. Development, Inc.  
5004 South 110th Street  
Omaha, NE 68137

- (b) Name and address of Secured Party:

The Security Mutual Life Insurance Company  
of Lincoln, Nebraska  
P.O. Box 82248  
Lincoln, Nebraska 68501-2248

- (c) This document covers goods which are or are to become fixtures.

**29. Reconveyance.** Upon payment of all Indebtedness secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Trust Property and shall surrender this Deed of Trust and all notes evidencing Indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Trust Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

**30. Substitute Trustee.** Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Trust Property, the successor trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.

**31. Miscellaneous Rights of Beneficiary.** Beneficiary may at any time and from time to time, without notice, and without impairing or adversely affecting the lien hereof, consent to the making of any plat of the Trust Property or the creation of any easement thereon or any covenants restricting use or occupancy thereof or agree to alter or amend the terms of this Deed of Trust. Any personal property remaining upon the Trust Property after the Trust Property has been possessed or occupied by Beneficiary, its agent

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or any purchaser following trustee's sale, foreclosure or under deed in lieu of trustee's sale or foreclosure, shall be conclusively presumed to have been abandoned by Trustor

**32. Request for Notice.** Trustor and Beneficiary hereby request that copies of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Trustor and Beneficiary at their mailing addresses set forth above.

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

T.C.K. DEVELOPMENT, INC.,  
a Nebraska corporation

By: Gerald L. Torczon  
Gerald L. Torczon, President

STATE OF NEBRASKA }

ss.

COUNTY OF DOUGLAS }

The foregoing instrument was acknowledged before me a Notary Public this 31<sup>st</sup> day of March, 1997, by Gerald L. Torczon of T.C.K. Development, Inc. Pres.



Doris J. Nichols  
Notary Public

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## EXHIBIT "A"

Lots 8 and 9, SARPY 84 COMMERCIAL PARK, an Addition to the City of Papillion, in  
Sarpy County, Nebraska.