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SUBMITTED PINNACLE BANK - GRETNA

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

2013-29355

2013 Sep 16 12:23:29 PM

*Sheryl J. Dowling*

REGISTER OF DEEDS



**WHEN RECORDED MAIL TO:**

PINNACLE BANK  
GRETNA OFFICE  
817 VILLAGE SQ  
PO BOX 519  
GRETNA, NE 68028-0519

FOR RECORDER'S USE ONLY

**NOTICE: THIS SUBORDINATION OF DEED OF TRUST RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**SUBORDINATION OF DEED OF TRUST**

**THIS SUBORDINATION OF DEED OF TRUST dated September 12, 2013, is made and executed among ROD RHODEN ("Beneficiary"); JERRY M. SLUSKY, ESQ. ("Trustee"); JMF, LLC ("Borrower"); and PINNACLE BANK ("Lender").**

**SUBORDINATED INDEBTEDNESS.** Beneficiary has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

**PROMISSORY NOTE DATED FEBRUARY 2, 2011.**

**SUBORDINATED DEED OF TRUST.** The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust dated February 2, 2011 from JMF, LLC; and MCCUNE DEVELOPMENT, LLC ("Trustor") to JERRY M. SLUSKY, ESQ. ("Trustee") in favor of ROD RHODEN ("Beneficiary") (the "Subordinated Deed of Trust") and recorded in SARPY County, State of Nebraska as follows:

**RECORDED FEBRUARY 3, 2011 AS INSTRUMENT NO. 2011-03653 IN THE OFFICE OF THE SARPY COUNTY REGISTER OF DEEDS .**

**REAL PROPERTY DESCRIPTION.** The Subordinated Deed of Trust covers the following described real property (the "Real Property") located in SARPY County, State of Nebraska:

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

The Real Property or its address is commonly known as RAW LAND FOR DEVELOPMENT, GRETNA, NE.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

**PROMISSORY NOTE # 2400047877 ORIGINALLY DATED OCTOBER 31, 2012 IN THE PRINCIPAL AMOUNT OF \$600,000.00 AND RENEWED SEPTEMBER 12, 2013 IN THE AMOUNT OF \$700,000.00.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated September 12, 2013, from Borrower to Lender (the "Lender's Lien") and recorded in SARPY County, State of Nebraska as follows:

**DEED OF TRUST DATED OCTOBER 31, 2012 AND RECORDED NOVEMBER 1, 2012 AS INSTRUMENT NO. 2012-34196 IN THE OFFICE OF THE SARPY COUNTY REGISTER OF DEEDS .**

As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Deed of Trust.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Trustor, who may or may not be the same person or entity as Borrower, and Beneficiary each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Trustor and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these financial accommodations from Lender to Borrower, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

**NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:**

**SUBORDINATION.** The Subordinated Deed of Trust and the Subordinated Indebtedness secured by the Subordinated Deed of Trust is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property held by Beneficiary, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.** Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Borrower's request and not at the request of Lender; (C) Lender has made no representation to Beneficiary as to the creditworthiness of Borrower; and (D) Beneficiary has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Beneficiary.

**BENEFICIARY WAIVERS.** Beneficiary waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**LENDER'S RIGHTS.** Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Beneficiary, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

**DEFAULT BY BORROWER.** If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. Any default by Borrower under the terms of the Subordinated Indebtedness also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Subordination:

**Amendments.** This Subordination constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

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

**Authority.** The person who signs this Subordination as or on behalf of Beneficiary represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Beneficiary's security interests in Beneficiary's property, if any.

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

**Governing Law.** This Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nebraska without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of Nebraska.

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Beneficiary herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

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

**Waive Jury.** All parties to this Subordination hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED SEPTEMBER 12, 2013.**

**BORROWER:**

JMF, LLC

By: 

PAUL S. MCCUNE, Managing Member of JMF, LLC

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

**BENEFICIARY:**

X [Signature]  
ROD RHODEN, Individually

**TRUSTEE:**

X [Signature]  
JERRY M. SLUSKY, ESQ., Individually

**LENDER:**

**PINNACLE BANK**

X [Signature]  
Doug Zoerb, Market President



**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**

STATE OF Nebraska )  
 ) SS  
COUNTY OF Sarpy )

On this 12<sup>th</sup> day of Sept., 20 13, before me, the undersigned Notary Public, personally appeared **PAUL S. MCCUNE, Managing Member of JMF, LLC**, and known to me to be member or designated agent of the limited liability company that executed the Subordination of Deed of Trust and acknowledged the Subordination to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Subordination and in fact executed the Subordination on behalf of the limited liability company.



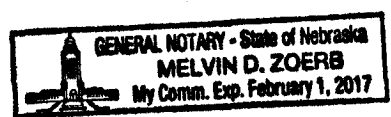
By [Signature]  
Printed Name: M. D. Zoerb  
Notary Public in and for the State of NE  
Residing at Sarpy County  
My commission expires 2-1-17

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF Nebraska )  
 ) SS  
COUNTY OF Sarpy )

On this day before me, the undersigned Notary Public, personally appeared **ROD RHODEN**, to me known to be the individual described in and who executed the Subordination of Deed of Trust, and acknowledged that he or she signed the Subordination as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 13<sup>th</sup> day of Sept., 20 13.



By [Signature]  
Printed Name: M. D. Zoerb  
Notary Public in and for the State of NE  
Residing at Sarpy County  
My commission expires 2-1-17

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF Nebraska )  
 ) SS  
COUNTY OF Sarpy )

On this day before me, the undersigned Notary Public, personally appeared **JERRY M. SLUSKY, ESQ.**, to me known to be the individual described in and who executed the Subordination of Deed of Trust, and acknowledged that he or she signed the Subordination as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 13<sup>th</sup> day of Sept. 9, 2013.

By M. D. Zoerb  
Printed Name: M. D. Zoerb  
Notary Public in and for the State of NE  
Residing at Sarpy County  
My commission expires 2-1-17

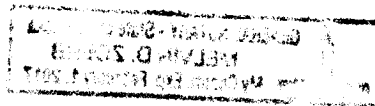


**LENDER ACKNOWLEDGMENT**

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared **Doug Zoerb**, and known to me to be the **Market President**, authorized agent for **PINNACLE BANK** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **PINNACLE BANK**, duly authorized by **PINNACLE BANK** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **PINNACLE BANK**.

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



## EXHIBIT A

### Parcel 1:

Taxlot 15A in the W ½ of the SW ¼ of Section 28, Township 14 North, Range 11 East of the 6<sup>th</sup> P.M., in Sarpy County, Nebraska, EXCEPT those portions thereof which have been platted and are now known as Lucky J No. 1 and Lucky J No. 2, both Subdivisions, as surveyed, platted and recorded, in Sarpy County, Nebraska, and EXCEPT that part thereof included within the following described tract which was conveyed to the State of Nebraska for Highway 370 right-of-way described as follows: Beginning at the Southwest corner of said Section 28; thence Northerly, a distance of 73.22 feet, to a point on the West line of said Section 28; thence Southeasterly, a distance of 459.49 feet, to a point, 66.73 feet North of the South line of said Section 28; thence Northeasterly, a distance of 302.25 feet, to a point 103.55 feet North of the South line of said Section 28; thence Easterly, a distance of 213.83 feet, to a point 100 feet North of the South line of said Section 28; thence Southeasterly, a distance of 388.27 feet, to a point 60.00 feet North of the South line of said Section 28; thence Easterly, a distance of 1,051.00 feet to a point 60.00 feet North of the South line of Section 28; thence Easterly, a distance of 200.00 feet to a point on the North and South Quarter line of said Section 28; thence Southerly, a distance of 61.80 feet to the South line of said Section 28; thence Westerly, along the South line of said Section 28; a distance of 2,646.45 feet, to the point of beginning, subject to public road and/or highways AND Taxlot 16B in the E ½ of the SW ¼ of Section 28, Township 14 North, Range 11 East of the 6<sup>th</sup> P.M., in Sarpy County, Nebraska, more particularly described as follows: Commencing at the Southeast corner of the SW ¼ of said Section 28; thence N 00°06'15" W (assumed bearing) for 61.80 feet, along the East line of the SW ¼ of said Section 28; to the North right-of-way line of Highway 370 and the true point of beginning; thence S 89°31'28" W, for 199.85 feet, along said North right-of-way line of Highway 370; thence N 89°57'35" W, for 1,051.00 feet, along the said North right-of-way line of Highway 370, which is parallel with and 60.00 feet North of the South line of the said SW ¼ of Section 28; thence N 84°02'47" W, for 71.99 feet along the said North right-of-way line, to the West line of the E ½ of the SW ¼ of Section 28; thence N 00°08'04" W, for 2,581.94 feet to the Northwest corner of the E ½ of the SW ¼ of said Section 28; thence S 89°59'10" E, for 331.88 feet, along the North line of the SW ¼ of said Section 28; thence S 66°33'47" E, for 571.75 feet; thence S 81°30'00" E, for 473.08 feet to the East line of the SW ¼, at a point that is 297.09 feet South of the Northeast corner of the SW ¼ of said Section 28; thence S 00°06'15" E, for 2,291.07 feet, along said Ease line, to the true point of beginning.

### Parcel 2:

Lot 1, Ballena, except the West 20 feet of the North 50 feet, A Subdivision, as Surveyed, Platted and Recorded in Sarpy County, Nebraska, except the South 155.81 feet of Lot 1, Ballena, more particularly described as follows: Commencing at the Southwest corner of the SE ¼ of Section 28, Township 14 North, Range 11 East; thence N 00°08'51" E (assumed bearing) along with West line of said SE 1/4, a distance of 106.11 feet to the South corner of Lot 1, Ballena and the point of beginning; thence continuing N 00°08'51" E along the West line of Lot 1, a distance of 155.81 feet; thence S 89°52'00" E to a point on the Northerly R.O.W. line of 173<sup>rd</sup> Street, a distance of 45.59 feet; thence in a Southwesterly direction, on a curve to the left, along said R.O.W. line of 173<sup>rd</sup> Street, an arc distance of 164.51 feet to the point of beginning.,

### Parcel 3:

Taxlot 6, described as: A tract of land located in the SW ¼ of Section 31, Township 14 North, Range, 11, East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, and more particularly described as follows: Beginning at the Northwest corner of the SW ¼ of Section 31, Township 14 North, Range 11, East of the 6<sup>th</sup> P.M.; thence N 87°24'24" E, 2,427.77 feet; thence S 2°46'23" E, 1,321.75 feet; thence S 87°27'20" W, 2,480.38 feet; thence N 2°26'34" W, 1,319.87 feet to the

point of beginning, except Lots 1 through 69, Devonshire Estates, a Subdivision and EXCEPT Taxlot 3; and EXCEPT a tract of land described as follows: That part of the SW ¼ of Section 31, Township 14 North, Range 11 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, described as follows: Beginning at the Southeast corner of Lot 51, Devonshire Estates, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska; thence N 02°35'16" W (assumed bearing), 131.39 feet on the East line of said Lot 51 to the Northeast corner of said Lot 51; thence N 87°24'44" E, 62.95 feet on the Easterly extension of the North line of said Lot 51; thence S 19°27'17" E, 137.38 feet to a point on the Easterly extension of the South line of said Lot 51; thence S 87°27'20" W, 102.81 feet on the Easterly extension of the South line of said Lot 51 to the point of beginning; and EXCEPT that part of the SW ¼ of Section 31, Township 14 North, Range 11 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska which has been platted into Lots 70 through 77, Devonshire Estates.

**Parcel 4:**

Taxlot 9, in the NE ¼ of Section 1, Township 13 North, Range 10 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, EXCEPT the East 50 feet now taken for right of way, the remaining tract described by metes and bounds as follows: Commencing at the survey spike at the Southeast corner of the said NE ¼ of Section 1; thence S 87°20'31" W (bearings referenced to the Nebraska State Plane System NAD83 with the 95 adjustment) for 50.00 feet along the South line of the SE ¼ of the NE ¼ of Section 1 to the West right of way line of 204<sup>th</sup> Street and the true point of beginning; thence S 87°20'31" W for 1,269.05 feet along the South line of the SE ¼ of the NE ¼ of Section 1 to a 3/4" open top pipe at the Southwest corner thereof; thence S 87°20'41" W for a 1,318.94 feet to a 1" open top pipe at the Southwest corner of the SW ¼ of the NE ¼ of Section 1; thence N 02°30'56" W for 1,320.04 feet to a ¼" open top pipe at the Southwest corner of the NW ¼ of the NE ¼ of Section 1; thence N 02°33'27" W for 391.00 feet along the West line of the N ½ of the NE ¼ of Section 1; thence S 62°20'45" E for 477.24 feet; thence S 76°00'1-" E for 59.15 feet; thence N 88°31'21" E for 289.24 feet; thence N 82°11'14" E for 264.42 feet; thence North 67°16'41" E for 466.01 feet; thence N 60°48'30" E for 199.43 feet; thence N 84°49'40" E for 954.51 feet to the West right of way line of 204<sup>th</sup> Street; thence S 02°25'59" E for 1,761.93 feet along the West right of way line parallel with and 50 foot West of the East line of the NE ¼ of Section 1, to the point of beginning.