

FILED SARPY CO. NE.

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Glenn J. Lawling

REGISTER OF DEEDS

COUNTER	<u>JS</u>	C.E.	<u>D</u>
VERIFY	<u>AK</u>	D.E.	<u>P</u>
PROOF	<u>AK</u>		
FEE \$	<u>190.00</u>		
CHECK#	<u>1485713</u>		
CHG		CASH	
REFUND		CREDIT	
SHORT		NCR	

DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 2 day of June, 2005, among Dodge-Lots Joint Venture, a Nebraska joint venture, as Trustor, First National Bank of Omaha, a national banking association, as Trustee, and First National Bank of Omaha, a national banking association, as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, the following described real estate (the "Real Estate"):

The real estate in Sarpy County, Nebraska, legally described on Exhibit "A" attached hereto and by this reference incorporated herein.

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or

A

in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The Real Estate, Improvements and the additional property above described are hereinafter referred to as the "Mortgaged Property."

FOR THE PURPOSE OF SECURING EACH OF THE FOLLOWING (the "Secured Obligations"):

A. Payment of the principal sum of Four Million Two Hundred Thousand Dollars (\$4,200,000) evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every other obligation, covenant and agreement of Trustor in the Promissory Note, other than as set forth in A. above.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor contained herein, incorporated herein by reference or contained in any other "Loan Document," as defined in the Promissory Note or in any other agreement now or hereafter at any time given by Trustor to secure any indebtedness or obligation hereby secured, or any part thereof.

D. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

E. Payment of future advances necessary to protect the Mortgaged Property.

F. Payment of future advances to be made at the option of Trustor and Beneficiary.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Mortgaged Property, subject only to the Permitted Exceptions set forth in Exhibit "B" attached hereto and by this reference incorporated herein as if fully set forth.

2. **Maintenance:** To keep the Mortgaged Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof, to comply with the provisions of restrictions affecting the Mortgaged Property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon the Mortgaged Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

B

3. **Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Mortgaged Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against the Mortgaged Property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed Improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any building loan agreement between Trustor and Beneficiary, (d) to allow Beneficiary to inspect the Mortgaged Property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.

4. **Fire and Casualty Insurance:** To keep the Mortgaged Property insured against loss or damage by fire and other risk or risks which, in the opinion of Beneficiary should be insured against, under policies of insurance with loss payable to Beneficiary in form, amount and companies acceptable to Beneficiary. Said policies shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Trustor to Beneficiary to all rights thereunder, including all return premiums; to deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and make payment of premiums thereon, which payment is repayable on demand. Neither Trustee nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not Event of Default hereunder has occurred shall Beneficiary, by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Trustor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. In case of any loss the amount collected under any policy of insurance on the Mortgaged Property may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness and/or obligation secured hereby and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the Improvements partially or totally destroyed to a condition satisfactory to said Beneficiary, or said amount, or any portion thereof, may be released to the Trustor. In any such event neither the Trustee nor the Beneficiary shall be obligated to see the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

5. **Taxes and Other Sums Due:** To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting the Mortgaged Property, and in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on the Mortgaged Property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto, (2) all costs, fees and expenses of this trust, whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary, not to exceed the

C

maximum amount allowed bylaw therefor at the time when such request is made, (4) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor, (5) if the Mortgaged Property includes a leasehold estate, all payments and obligations required of the Trustor, or his successor in interest, under the terms of the instruments or instruments creating such leasehold, Trustor hereby agreeing not to amend, change, or modify his leasehold interest or the terms on which he has such leasehold interest, or to do so, without the written consent of Beneficiary being first obtained, (6) all payments and monetary obligations required of the owner of the Mortgaged Property under any declaration of covenants, conditions and restrictions pertaining to the Mortgaged Property or any modification thereof. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his reasonable fees. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the Mortgaged Property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment.

In the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, the holder of this Deed of Trust and of the obligations which it secures shall have the right to declare all sums secured hereby due as of a date to be specified by not less than 30 days' written notice to be given to Trustor by Beneficiary; provided, however, that such election shall be ineffective if Trustor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such tax and agrees to pay any such tax when hereafter levied or assessed against the Mortgaged Property.

6. **Sums Advanced to Bear Interest:** To pay upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the default rate in the Promissory Note and shall be secured by this Deed of Trust.

7. **Assignment of Deposits:** That as further additional security if this be a construction loan, Trustor hereby transfers and assigns to Beneficiary during continuance of these Trusts, all right, title and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to the Mortgaged Property.

8. **Failure of Trustor to Comply with Deed of Trust:** Should Trustor fail to make any payment, or to do any act as provided in this Deed of Trust, or fail to perform any obligation secured by this Deed of Trust, or do any act Trustor agreed not to do, the same shall constitute an Event of Default under this Deed of Trust. Beneficiary, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof and without contesting the validity or amount of the same, may (a) make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Mortgaged Property for such purposes, and (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgement is or appears to be prior or superior hereto, and (c) in exercising any such power, pay necessary expenses, employ counsel and pay its reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary.

IT IS MUTUALLY AGREED THAT:

9. **Litigation:** Trustor shall defend this Deed of Trust in any action or proceeding purporting to affect the Mortgaged Property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute

D

all necessary claims and actions to prevent or recover for any damage to or destruction of the Mortgaged Property, and either Trustee or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgement be entered in any action or proceeding; and Trustor or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on demand shall pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Beneficiary or Trustee in the Mortgaged Property is directly questioned by such action, including but not limited to any action for the condemnation or partition of the Mortgaged Property.

10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgement, settlement or otherwise, (a) for injury or damage to the Mortgaged Property, or (b) in connection with any condemnation for public use or injury to the Mortgaged Property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may acquire.

All amounts received by Beneficiary pursuant to this Deed of Trust under any fire or other insurance policy, in connection with any condemnation for public use of or injury to the Mortgaged Property, for injury or damage to the Mortgaged Property or in connection with the transaction financed by the loan secured hereby are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any Event of Default or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of the Mortgaged Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or Trustee with respect to the remainder of the Mortgaged Property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, in come, issues and profits herein before assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding the assignment of the Rents and Profits set forth above, Beneficiary hereby grants permission to

E

Trustor to collect and retain the rents, income, issues and profits of the Mortgaged Property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement secured hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. Acceleration Clause; Judicial Foreclosure or Trustee's Sale on Default:
Upon the occurrence of any one or more of the following (hereinafter referred to as an "Event of Default"):

(a) failure by Trustor to pay within ten (10) days of the date such payment is due and payable, except with respect to the final payment, for which there is no grace period, (i) any payment of principal of or interest on the Promissory Note, or (ii) any other sum due under the Promissory Note or under any other "Loan Document," as defined in the Promissory Note, together with interest thereon;

(b) failure by Trustor to punctually perform or observe any covenant or agreement contained in this Deed of Trust (other than the monetary obligations described in subparagraph (a) above) and such failure shall not have been cured within thirty (30) days after written notice from Beneficiary of such failure;

(c) the occurrence of a default, or an Event of Default, under any Loan Document (other than the Promissory Note) or under any other obligation of Trustor to Beneficiary, whether or not existing on the date hereof or hereafter created or arising, and such failure is not cured within the applicable cure period, if any;

(d) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Trustor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the "Mortgaged Property," or of any or all of the royalties, revenues, rents, issues or profits thereof; or Trustor shall make any general assignment for the benefit of creditors, or shall admit in writing Trustor's inability to pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Trustor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of

F

any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Trustor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Trustor which shall become alien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(g) deleted;

(h) if, during the term of the Promissory Note, Trustor shall, without the prior written approval of Beneficiary, sell, convey, alienate, mortgage or encumber the Mortgaged Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily; or if there is any merger, consolidation or dissolution affecting Trustor;

(i) any assignment by Trustor of the whole or any part of the rents, issues or profits arising from the Mortgaged Property to any person without the consent of Beneficiary;

(j) at any time any representation, warranty or statement made by Trustor in any Loan Document, certificate or financial statement delivered by Trustor shall be incorrect or misleading in any material respect; or any material misrepresentation shall at any time be made to Beneficiary by Trustor; or

(k) if any of the events in (d), (e) or (f) shall occur with respect to any Guarantor of the Promissory Note;

then, at the option of Beneficiary, Beneficiary may declare all sums evidenced by the Promissory Note, together with all accrued interest and any other sums due under any of the Secured Obligations, if such Event of Default is not cured and made good within such time and after such notice as may be required by applicable law, immediately due and payable and this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or the Mortgaged Property may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

In the event that the property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent (5%) of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

6

15. **Personal Property:** This Deed of Trust is also intended to encumber and create, and Trustor does hereby grant to Beneficiary, a security interest in any and all of the Mortgaged Property which is personal property owned by Trustor and now or hereafter located on or used in connection with the Mortgaged Property including, but not limited to, all equipment, fixtures, furniture, appliances and articles of personal property owned by Trustor and now or hereafter located on, attached to or used in and about the Improvements which are necessary to the complete and comfortable use and occupancy of the Improvements for all purposes for which they are intended and such other goods and chattels and personal property owned by Trustor as are ever to be used or furnished in operating the Improvements, or the activities conducted therein, and all renewals or replacements thereof or therefore, whether or not the same shall be attached to the Improvements in any manner, and all building materials and equipment hereafter situate on or about the Real Estate or the improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing items which are leased by Trustor. Trustor shall, from time to time, upon request of Beneficiary, provide Beneficiary with a current inventory of all of the personal property in such detail as Beneficiary may require.

16. **Security Agreement:** This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder Beneficiary shall have all of the rights and remedies of a secured party under the Nebraska Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any Event of Default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of the Mortgaged Property which is personal property and subject to security interest of Beneficiary hereunder to be sold in one of public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of the Mortgaged Property by Trustee, as provided for in this Deed of Trust, and Beneficiary shall further have all rights and remedies, whether at law in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Expenses of retaking, holding, preparing for sale, selling or the like shall be born by Trustor and shall include Beneficiary's and Trustee's fees and legal expenses. Beneficiary shall have the right to enter upon the Real Estate and the Improvements or any other real property or any personal property which is the subject of the security interest granted herein as located to take possession of, assemble and collect such personal property or to render it usable, or Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at a place deemed reasonably convenient to Beneficiary. If notice is required by law, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of the Mortgaged Property or of the time of or after which any private sale or other intended disposition is to be made, and, if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this Paragraph shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Deed of Trust upon giving the same notice with respect to the sale under the power of sale given the Trustee under this Deed of Trust.

17. **Fixture Financing Statement:** This Deed of Trust is intended to be a financing statement within the purview of the Nebraska Uniform Commercial Code with respect to those items of the Mortgaged Property as constitute fixtures on the Real Estate. The address of Trustor (Debtor) and Beneficiary (Secured Party) are set forth on the first page of this Deed of Trust. This Deed of Trust is to be filed for record with the Register of Deeds of Sarpy County, Nebraska, where the real estate is located. Trustor is the record owner of the real estate.

M

18. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the register of deeds of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

19. **No Waiver by Beneficiary:** No waiver by Beneficiary of any right under this Deed of Trust shall be effective unless in writing. Waiver by Beneficiary of any right granted to Beneficiary under this Deed of Trust or of any provision of this Deed of Trust as to any transaction or occurrences shall not be deemed a waiver as to any future transaction or occurrences. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder, but failed to make or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare an Event of Default for failure so to pay.

20. **Waiver of Statute of Limitations:** Time is of the essence in all Trustor's obligations 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 in any action or proceeding for the purpose of enforcing this Trust or any right or remedies hereunder.

21. **Inspection and Business Records:** Beneficiary at any time during the continuation of this Trust may enter and inspect the Mortgaged Property at any reasonable time. Trustor agrees that in the event the Mortgaged Property is now or hereafter used for commercial or residential income purposes, when requested by Beneficiary, Trustor will promptly deliver to Beneficiary, such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Beneficiary, which will be in form and content prepared according to the usual and acceptable accounting principles and practices, which statements shall cover the financial operations relating to the Mortgaged Property. Trustor further agrees when requested by Beneficiary to promptly deliver in writing such further additional information as required by Beneficiary relating to any such financial statements.

22. **Remedies:** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given 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 them, and either of them may pursue inconsistent remedies. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any Event of Default of Trustor, Beneficiary may, at its option, offset against any indebtedness secured hereby, and the Beneficiary is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness of the Trustor to the Beneficiary any and all sums of money of Trustor which Beneficiary may have in its possession or under its control, including without limiting the generality of the foregoing, any savings account, deposit, investment certificate, escrow or trust funds.

23. **Law Applicable:** That this Deed of Trust shall be construed according to the laws of the State of Nebraska.

24. **Illegality:** In the event that 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 provision, and to this end the provisions of this Deed of Trust are declared to be severable.

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25. **General Provisions:** (a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Beneficiary herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this Deed of Trust, and shall not be used in construing it. If more than one person is named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

26. **Acceptance:** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

27. **Address for Mailing Notices:** Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder shall be mailed to each person itemized below at the address indicated:

Dodge-Lots Joint Venture, Trustor c/o W. L. Morrison, Jr.
N.P. Dodge Company
8701 West Center Road
Omaha, Nebraska 68114

First National Bank of Omaha, Trustee First National Bank of Omaha
and Beneficiary Attn: Senior Officer, Mortgage Loan Department
1620 Dodge Street
Omaha, Nebraska 68102

With a copy to: James D. Buser, Esquire
Pansing Hogan Ernst & Bachman, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

28. **Miscellaneous:**

(a) Any provision in this Deed of Trust to the contrary notwithstanding, the occurrence of any default or Event of Default and the right of Beneficiary to accelerate contained herein shall be subject to the applicable grace and cure periods, if any, provided in the Promissory Note secured hereby.

(b) Notwithstanding anything contained in this Deed of Trust to the contrary or contained in the Promissory Note or contained in any other "Loan Document," as defined in the Promissory Note, the sale of lots, or portions of lots, from the Real Estate of the Trustor in the ordinary course of its business shall not constitute an Event of Default or a default under the Promissory Note, this Deed of Trust or under any of the other Loan Documents, or enable the Beneficiary or Trustee to accelerate the indebtedness secured hereby.

(c) Provided that an Event of Default or default has not occurred and is not continuing under this Deed of Trust, the Promissory Note or any of the other Loan Documents, Trustee and Beneficiary shall reconvey platted lots comprising the Real Estate upon receipt of the Applicable Principal Reduction set forth in the Promissory Note secured hereby and the payment of Fifty Dollars (\$50.00) Release Fee for each lot reconveyed from this Deed of Trust.

7

(d) Trustee and Beneficiary hereby agree to execute such documents and take such actions as shall reasonably be required for the subdivision platting of the Real Estate into the Hyda Hills subdivision and for the Sanitary and Improvement District's installation of improvements.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

BORROWER:

DODGE-LOTS JOINT VENTURE, a Nebraska joint venture

By: **DODGE LAND CO.**, a Nebraska corporation

By: *W. L. Morrison, Jr.*
W. L. Morrison, Jr., President

By: **LOTS, INC.**, a Nebraska corporation

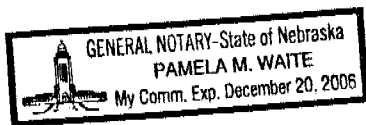
By: *W. L. Morrison, Jr.*
W. L. Morrison, Jr., President

FIRST NATIONAL BANK OF OMAHA, a national banking association

By: *Shirley W. Murgin*
Title: V.P.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

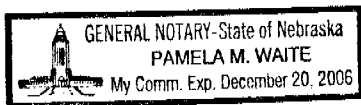
The foregoing instrument was acknowledged before me this 2 day of June, 2005, by W. L. Morrison, Jr., President of Dodge Land Co., a Nebraska corporation, joint venture partner of Dodge-Lots Joint Venture, a Nebraska joint venture, on behalf of the joint venture.



Pamela M. Waite
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 2 day of June, 2005, by W. L. Morrison, Jr., President of Lots, Inc., a Nebraska corporation, joint venture partner of Dodge-Lots Joint Venture, a Nebraska joint venture, on behalf of the joint venture.



Pamela M. Waite
Notary Public

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EXHIBIT "A"

Legal Description

Lots 1 through 249, inclusive, Hyda Hills, a subdivision as surveyed, platted and recorded in ~~Douglas~~ ^{SARPY} County, Nebraska

And

The real estate commencing at the Northeast Corner of Lot 249, Hyda Hills Subdivision, in the Southwest Quarter of Section 15, Township 13 North, Range 13 East of the 6th Principal Meridian, Sarpy County, Nebraska, on the North Line of said Southwest Quarter, and also the Point of Beginning; thence North 89 degrees 17 minutes 40 seconds East on Said North Line, for a distance of 1,795.51 feet to the Center of Said Section 15; thence South 00 degrees 10 minutes 50 seconds East on the East line of Said Southwest Quarter, a distance of 1,915.80 feet, to the Northeast Corner of Lot 51, Hyda Hills Subdivision; thence South 89 degrees 49 minutes 10 seconds West, 138 feet; thence North 00 degrees 10 minutes 50 seconds West, 17.53 feet; thence South 89 degrees 49 minutes 10 seconds West, 180.00 feet; thence North 00 degrees 10 minutes 50 seconds West, 47.66 feet; thence South 89 degrees 49 minutes 10 seconds West, 620.00 feet; thence North 00 degrees 10 minutes 50 seconds West, 1,091.98 feet; thence South 89 degrees 17 minutes 40 seconds West, 35.53 feet; thence North 00 degrees 42 minutes 20 seconds West, 130 feet; thence South 89 degrees 17 minutes 40 seconds West, 762.82 feet; thence North 00 degrees 42 minutes 20 seconds West, 180.00 feet; thence South 89 degrees 17 minutes 40 seconds West, 80.31 feet; thence North 00 degrees 42 minutes 20 seconds West; 130.00 feet; thence North 89 degrees 17 minutes 40 seconds East, 13.50 feet; thence North 00 degrees 42 minutes 20 seconds West; 130.00 feet; thence North 89 degrees 17 minutes 40 seconds East, 14.56 feet; thence North 00 degrees 42 minutes 20 seconds West, 180.00 feet to the Point of Beginning.

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EXHIBIT "B"

Permitted Exceptions

1. Return of Appraisers recorded April 11, 1980 in Book 53 at Page 233 of the Records of Sarpy County, Nebraska.
2. MUD Notice recorded March 11, 1974 in Book 47 at Page 128 of the Records of Sarpy County, NE.
3. Plat and Dedication recorded May 24, 2005 at Instrument Number 2005-16910 of the Records of Sarpy County, Nebraska.