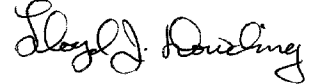


COUNTER	DKH
VERIFY	DKH
FEE \$	135.00
CHG	SFILE
SUBMITTED	OMAHA TITLE & ESCROW, INC.

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2012-02116**

2012 Jan 23 10:33:56 AM



REGISTER OF DEEDS



Return Recorded Document To:  
First National Bank of Omaha  
Attn: Scott W. Damrow, Vice President  
1620 Dodge Street, Stop 1050  
Omaha, NE 68197

**PROMISSORY NOTE, DEED OF TRUST AND LOAN DOCUMENTS**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS PROMISSORY NOTE, DEED OF TRUST AND LOAN DOCUMENTS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement"), is made to be effective as of the 20 day of January, 2012, regardless of the actual date of execution by the parties, by and among DODGE-LOTS JOINT VENTURE, a Nebraska joint venture ("Original Borrower"), DODGE LAND CO., a Nebraska corporation ("Original Partner"), LOTS, INC., a Nebraska corporation ("New Borrower"), and FIRST NATIONAL BANK OF OMAHA ("Lender").

RECITALS

A. Original Borrower, acting by and through Original Partner and New Borrower as its joint venture partners, is the maker of a Promissory Note dated October 31, 2009 in the principal amount of Three Million Five Hundred Fourteen Thousand Dollars (\$3,514,000.00) ("Note"), which Note supersedes and replaces a promissory note dated June 2, 2005 in the original maximum principal amount of Four Million Two Hundred Thousand Dollars (\$4,200,000.00), executed by Original Borrower payable to the order of Lender and evidencing a loan from Lender to Original Borrower in such amount (the "Loan"); and

B. The Loan and the obligations of payment and performance of the Note are secured by a Deed of Trust, Security Agreement and Assignment of Rents dated June 2, 2005 and recorded on June 6, 2005 as Instrument No. 2005-18571 (the "Deed of Trust"), with respect to the real property located in Sarpy County, Nebraska and more particularly described in such Deed of Trust; and

C. As a result of the issuance by Lender of one or more deeds of reconveyance, certain portions of the collateral described in the Deed of Trust have been released from the lien of the Deed of Trust, but the Deed of Trust continues to encumber the remainder of the collateral, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

D. Original Borrower desires to convey to New Borrower all right, title and interest in and to the Property, and New Borrower desires to accept such conveyance; and

E. Original Borrower and New Borrower desire to set forth herein with particularity the terms and conditions governing the assignment and assumption of the Loan; and

F. For good and valuable consideration, Lender is willing to consent to the conveyance of the Property to New Borrower and to the assumption of Original Borrower's obligations under the Note, the Deed of Trust, and each other document executed by Original Borrower in connection with the Loan (collectively, the "Loan Documents") by New Borrower, all as more particularly set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein as if fully set forth in this paragraph.

2. Definitions. Terms as defined in the Loan Documents shall have the same meaning when used herein, unless defined otherwise in this Agreement.

3. Transfer. Subject to the terms and conditions set forth herein, Lender hereby (i) acknowledges and consents to the conveyance of all right, title and interest in and to the Property from Original Borrower to New Borrower, (ii) recognizes that New Borrower is succeeding to all of the rights, duties, obligations and liabilities of Original Borrower and Original Partner under the Loan Documents, and (iii) agrees that the act of conveyance of the Property from Original Borrower to New Borrower shall not be deemed by Lender to be an event of default under the Loan Documents.

4. Assignment and Assumption. With regard to the assignment and assumption of the Loan:

(a) Original Borrower, by this Agreement, hereby assigns, sets over and transfers unto New Borrower all its respective rights, duties, obligations and liabilities accruing or arising under the Note, the Deed of Trust and all other Loan Documents, or any of them, whether arising or accruing prior to, on or after the effective date hereof, it being the intention of Original Borrower by this Agreement to cause New Borrower to be substituted for and in the stead of Original Borrower under the Note, the Deed of Trust and the other Loan Documents.

(b) New Borrower, by this Agreement, for itself and its successors and assigns, accepts the assignment of all rights, duties, obligations and liabilities accruing and arising under the Note, the Deed of Trust and all other Loan Documents, and all of them, from Original Borrower, whether arising or accruing prior to, on or after the date hereof, assumes and agrees to perform all of the duties, obligations and liabilities to be performed and paid thereunder pursuant to the Note, the

Deed of Trust and all other Loan Documents, and joins in all assignments, indemnities, grants and conveyances of real and personal property and grants of security interests, as set forth in each and all of the Loan Documents, it being the intention of New Borrower by this Agreement to cause New Borrower to be substituted for and in the stead of Original Borrower under the Loan Documents. In furtherance of the foregoing, and not in limitation thereof, New Borrower specifically acknowledges and agrees that it is personally liable to Lender for payment of all principal, accrued and accruing interest and other charges as and when due under the Note, Deed of Trust and other Loan Documents.

(c) Lender, by this Agreement, consents to the conveyance of the Property to New Borrower and to the assignment and assumption of Original Borrower's rights, duties, obligations and liabilities under the Note, the Deed of Trust and all other Loan Documents. Lender acknowledges that any conditions set forth in the Loan Documents for obtaining Lender's consent to any transfer or conveyance of the Property and the assignment and assumption of the Note, the Deed of Trust and all other Loan Documents are hereby met and satisfied. From and after the date hereof, Lender agrees to look to New Borrower and not to Original Borrower or to Original Partner for the payment and satisfaction of the duties and obligations under the Note, the Deed of Trust and all other Loan Documents.

(d) Original Borrower, Original Partner, New Borrower and Lender each acknowledge and agree that nothing in this Agreement shall constitute a release or discharge, in whole or in part, of any liability of any guarantor or other person liable for payment and performance under the Note, the Deed of Trust or any other Loan Documents, including, but not limited to, W. L. Morrison Jr. and Judith C. Morrison, except and unless any guarantor is specifically and in writing released or discharged by Lender.

(e) Original Borrower, Original Partner, New Borrower and Lender each acknowledge and agree that as of January 12, 2012, the unpaid principal balance of the Loan is One Million Five Hundred Seventy-Two Thousand Seven Hundred Thirty-Seven and 59/100 Dollars (\$1,572,737.59), plus accrued and unpaid interest and late charges of Eighty-Two Thousand Two Hundred Thirty-Seven and 33/100 Dollars (\$82,237.33), for a total due and owing to Lender, as of January 12, 2012, of One Million Six Hundred Fifty-Two Thousand Four Hundred Seventy-Five and 69/100 Dollars (\$1,652,475.69).

5. Notices. Effective as of the date of this Agreement, any notice required or permitted to be given under any of the Loan Documents to New Borrower, as successor to Original Borrower, shall be addressed to:

Lots, Inc.  
c/o W. L. Morrison Jr., President  
7110 Morgan Circle  
Omaha, NE 68152

6. Representations and Warranties of Original Borrower and New Borrower. Original Borrower and New Borrower hereby jointly and severally represent and warrant to Lender as

follows, for purposes of inducing Lender to consent to the assignment and assumption described herein:

(a) New Borrower is a corporation duly organized and validly existing under the laws of the State of Nebraska and has full power and authority to enter into this Agreement and to satisfy its obligations hereunder and under the Loan Documents as assignee of Original Borrower.

(b) All necessary action has been taken by the Directors of New Borrower to authorize and direct it to enter into this Agreement and satisfy its obligations hereunder and under the Loan Documents as assignee of Original Borrower.

(c) Original Borrower is a joint venture duly organized and validly existing under the laws of the State of Nebraska and, acting by and through Original Partner and New Borrower as its sole joint venture partners, has full power and authority to enter into this Agreement and to satisfy its obligations hereunder and under the Loan Documents as assignor to New Borrower.

(d) All necessary action has been taken by both of the joint venture partners comprising Original Borrower to authorize and direct it to enter into this Agreement and satisfy its obligations hereunder and under the Loan Documents as assignor to New Borrower.

(e) Neither the execution and delivery of this Agreement by Original Borrower (acting by and through its joint venture partners) and New Borrower nor the satisfaction of their respective obligations hereunder and under the Loan Documents shall constitute a breach or default by any such party of the terms or conditions of any contract, lease, mortgage, deed of trust, or other agreement to which such party is a party or by which it or its property is otherwise bound nor cause a legal or equitable lien or other third party claim or encumbrance to be created or otherwise imposed upon any of the assets of Original Borrower, Original Partner or New Borrower.

(f) The Loan Documents as modified previously and by this Agreement set forth the entire agreement of the parties thereto and hereto with regard to the Loan and constitute the legal, valid and binding obligations of New Borrower, enforceable against New Borrower, as successor in interest of Original Borrower with respect thereto, in accordance with their respective terms.

7. Additional Agreements. Original Borrower, Original Partner and New Borrower shall, whenever any such party shall be requested to do so by Lender, promptly cause to be executed, acknowledged and delivered any and all such further conveyances, confirmations, instruments or further assurances and consents as may be reasonably necessary or proper, in the opinion of Lender, in order to effectuate the covenants and agreements herein provided. Original Borrower, Original Partner and New Borrower shall cooperate in good faith with Lender and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to carry out the intent and purposes of this Agreement, as reasonably determined by Lender.

8. No Other Change. Except as herein expressly amended, each and every term, condition, warranty and provision of the Loan Documents shall remain in full force and effect, and

such are hereby ratified, confirmed and approved by the parties hereto. Nothing herein shall be construed to release, discharge, alter or affect the obligations of New Borrower, as the assignee of Original Borrower, under the Loan Documents or the priority of the lien of the Deed of Trust in favor of Lender. A default under this Agreement shall constitute a default under the Loan Documents.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, except that New Borrower may not assign this Agreement or any of its payment and performance obligations under the Loan Documents, whether by contract or operation of law, without Lender's prior written consent, which may be given or withheld in Lender's sole discretion.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

11. Amendment. This Agreement may not be amended, supplemented, terminated or waived except by an instrument in writing, signed and acknowledged by all of the parties hereto.

12. Severability. If any provisions of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid and/or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is illegal, invalid and/or unenforceable, as the case may be, shall not be affected, and each provision of this Agreement shall be legal, valid and enforceable to the extent permitted by law. The illegality, invalidity and/or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the legality, validity and/or enforceability thereof in any other jurisdiction.

13. Waivers. No waiver of any breach of any warranty, representation, covenant or other term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other warranty, representation, covenant or other term or provision of this Agreement. No such waiver shall be effective unless in writing and signed by the party affecting the waiver. This Agreement shall not constitute, or be deemed to be, a waiver of any event of default that exists as of the effective date under the Note, the Deed of Trust or any of the other Loan Documents.

14. Time of the Essence. The parties agree that time is essential to the performance by the parties of their obligations hereunder.

15. Attorneys' Fees. All reasonable attorneys' fees and costs incurred by Lender with respect to this Agreement shall be reimbursed to Lender by New Borrower on demand and, if not paid when due, shall bear interest at the default rate set forth in the Note from the due date therefor until paid in full. In addition, failure to pay such fees and costs when due shall constitute a default under this Agreement and the Loan Documents.

16. Closing Costs. New Borrower shall pay when due or upon Lender's demand all closing costs including, but not limited to, recording fees, title insurance premiums, and title company closing fees incurred by virtue of this Agreement. Failure to pay the same when due or upon demand shall constitute a default under this Agreement and the Loan Documents.

17. No Secondary Liens. At no time prior to payment in full of the Note shall New Borrower obtain any financing secured in whole or in part by any interest subordinate to Lender's in the Property or in any other collateral securing the Note, nor shall New Borrower permit any liens or encumbrances to be filed or perfected against such collateral or New Borrower's interest therein, in either event without obtaining the prior written consent of Lender, which may be given or withheld in Lender's sole discretion.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute a single agreement.

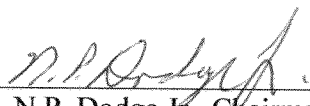
19. Security Instruments. The Deed of Trust and all other Loan Documents shall continue to secure New Borrower's obligations under the Note. New Borrower reaffirms all liens and security interests securing the Note, including, without limitation, the Deed of Trust, and acknowledges all of the same to be valid and subsisting.

20. Reconveyance. Any reconveyance of the Deed of Trust as to any portion of the Property shall constitute a release of this Agreement as to the same portion of the Property described in such reconveyance.

IN WITNESS WHEREOF, each of the parties have executed this Agreement as of the date and year first above stated.

DODGE-LOTS JOINT VENTURE, a Nebraska joint  
venture, Original Borrower

By: Dodge Land Co., a Nebraska corporation

By:   
N.P. Dodge Jr., Chairman

By: Lots, Inc., a Nebraska corporation

By:   
W. L. Morrison Jr., President

DODGE LAND CO., a Nebraska corporation,  
Original Partner

By: *N.P. Dodge Jr.*  
N.P. Dodge Jr., Chairman

LOTS, INC., a Nebraska corporation, New Borrower

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

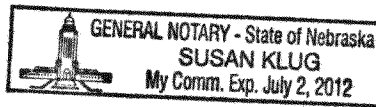
FIRST NATIONAL BANK OF OMAHA, Lender

By: *Scott W. Dambow*  
Name: SCOTT W. DAMBOW  
Title: VICE PRESIDENT

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of January, 2012, by N.P. Dodge Jr., Chairman of Dodge Land Co., a Nebraska corporation and a joint venturer in DODGE-LOTS JOINT VENTURE, a Nebraska joint venture, Original Borrower, for and on behalf of said corporation and for and on behalf of said joint venture.

*Susan Klug*  
Notary Public



STATE OF NEBRASKA )  
 ) ss.





**EXHIBIT "A"**  
**PROPERTY**

Lots 5, 6, 8, 9, 10, 11, 13, 14, 15, 23, 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 47, 48, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 77, 78, 79, 80, 86, 87, 88, 89, 90, 91, 92, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 115, 116, 121, 122, 123, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 234, 235, 236, 239, 240, 241, 245, 246, 247, and 249, inclusive, all in Hyda Hills, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska

and

All of SouthWest  $\frac{1}{4}$  of Section 15, Township 13 North, Range 13 East of the 6th P.M., in Sarpy County, Nebraska, except that portion platted as Lots 1-249 and Outlots 1-6, Hyda Hills, consisting of 52.35 acres more or less.