

FOR PARTIAL DEED OF RECONVEYANCE  
SEE MTG. BOOK 321 PAGE 206

FOR ASSIGNMENT SEE BOOK 304 PAGE 625

# 103 STATE OF NEBRASKA COUNTY OF OTOE, Filed for  
records in the REGISTER OF DEEDS APRIL 9 1999  
at 11:38 A-M recorded in Book # 304 of MTGS.  
Page 619, Delrosa Riess, Register of Deeds,  
Fee: \$ 30.50 By: Joan Volk, Deputy  
Entered  Indexed  Paged  Compared

### DEED OF TRUST

THIS DEED OF TRUST, is made this 7<sup>th</sup> day of April, 1999, by and among Richard and Mary Hoback, Husband and Wife, TRUSTORS, whose mailing address is 1730 South 11<sup>th</sup> Street, Nebraska City, NE 68410, and Richard Hoch, a member of the Nebraska State Bar Association, whose address is Hoch, Funke & Kelch, Three Professional Plaza, P.O. Box 488, Nebraska City, Nebraska 68410, as TRUSTEE, and Bruce and Susan Larson, Husband and Wife, whose mailing address is P.O. Box 793, Nebraska City, NE 68410, hereinafter collectively referred to as "BENEFICIARY"..

FOR VALUABLE CONSIDERATION, Trustor irrevocably transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the real property located in Otoe County, State of Nebraska, and described as follows (the "Property"):

#### Parcel A:

Beginning at a point 457.8 feet North and 50.0 feet West of the East quarter corner of Section 17, Township 8 North, Range 14, East of the 6<sup>th</sup> P.M., in Otoe County Nebraska; thence N88°37'W a distance of 398.0 feet; thence South a distance of 60.0 feet; thence N88° 37'W, a distance of 214.0 feet; thence South a distance of 164.5 feet; thence S89° 56'E a distance of 75.0 feet to the Northwest corner of the existing Gibson's Discount Center store building (AKA Pamida); thence S89° 56'E along the North wall of said Gibson Discount Center store building a distance of 180.0 feet to the Northeast corner of said Gibson Discount Center store building; thence S89° 56'E a distance of 357.0 feet, more or less, to the west right-of-way line of US Highway 75; thence North along said right-of-way line a distance of 210.8 feet, more or less, to the point of beginning, all now a part of South Side Annexation to the City of Nebraska City, Otoe County, Nebraska, EXCEPTING therefrom the following described parcel of land to-wit: Beginning at a point located 457.8 feet North and 50.0 feet West of the East Quarter corner of Section 17, Township 8 North, Range 14 East of the 6<sup>th</sup> P.M., in Otoe County, Nebraska, said point being the Southeast Corner of the ALCO Subdivision in Nebraska City, Nebraska, and running thence on an assumed bearing of South 00° 00' along the State of Nebraska Right-of-Way for 210.8 feet; thence N89° 56'W for 160 feet; thence North 00° 00'E for 214.5 feet to the South line of the said ALO Subdivision and thence Easterly for 160.1 feet along the said South Line to the point of beginning and containing 34,017 square feet, more or less.

#### Parcel B:

Beginning at the Southeast corner of Section Seventeen (17), Township Eight (8) North, Range Fourteen (14), Otoe County, Nebraska, at a point 2635.8 feet North of the Section Line, said point being in line with the fence that divides the Northeast Quarter and the Southeast Quarter of Section Seventeen (17), thence North from said point on said East section line 449.5 feet; thence West and parallel with the South line of said tract, 449 feet to the point of beginning; thence South and parallel with the East section line 60 feet; thence West and parallel with the South Line of said tract 240 feet to the West line of said tract; thence North and parallel with the East section 60 feet; thence East and parallel with the south line of said tract a distance of 240 feet to the point of beginning, all now in Southside Annexation to the City of Nebraska City, Otoe County, Nebraska; AND  
Beginning at the Southeast corner of Section Seventeen (17), Township Eight (8) North, Range Fourteen (14), Otoe County, Nebraska, at a point 2635.8 feet North of the Section Line, said point being in line with the fence that

-619-

Refiled  
FOR PARTIAL DEED OF RECONVEYANCE  
SEE MTG. BOOK 324 PAGE 90

divides the Northeast Quarter and the Southeast Quarter of Section Seventeen (17), thence North from said point on said East section line 449.5 feet; thence West and parallel with the South line of said tract 448 feet; thence South and parallel with the East section line 60 feet; thence West and parallel with the South line of said tract 240 feet to the West line of said tract to the point of beginning; thence South and parallel with the East line of said tract a distance of 389.5 feet; thence East on the South line of said tract a distance of 26 feet; thence north and parallel with the East line of said tract a distance of 389.5 feet; thence West and parallel with the South line of said tract a distance of 26 feet to the point of beginning, all now in South Side Annexation to the City of Nebraska City, Otoe County, Nebraska.

TOGETHER WITH, all rents, easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, improvements and buildings of any kind situated thereon and all personal property that may be or hereafter become an integral part of such buildings of any kind situated thereon and all personal property that may be or hereafter become an integral part of such buildings and improvements, all crops raised thereon, and all water rights.

The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "Trust Estate".

**FOR THE PURPOSE OF SECURING:**

a. Payment of indebtedness in the total principal amount of Four Hundred Thirty Thousand Dollars (\$430,000.00) Dollars, with interest thereon, as evidenced by a certain Promissory Note of even date (the "Note") executed by Trustor, which has been delivered and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof, and

b. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the highest per annum rate allowed by Nebraska law.

This Deed of Trust, the Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to collectively as the "Loan Instruments".

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST:**

1. PAYMENT OF INDEBTEDNESS. Trustor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Instruments.

2. TAXES AND FEES. Trustor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof on or before the due dates thereof Trustor shall pay said charges before delinquency, without notice or demand, and shall provide Beneficiary with evidence of payment of same.

Trustor shall deposit with Beneficiary on the first business day of each and every calendar month, until all Secured Obligations hereunder are paid in full an amount equal to one-twelfth of the annual Impositions estimated by Beneficiary to be next due on the Property. Trustor further agrees to cause a copy of all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and provided Trustor has deposited sufficient funds pursuant hereto, Beneficiary may pay such amounts as may be due thereunder out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor, and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary.

In its sole discretion, Beneficiary may waive Trustor's obligation to comply with the deposit requirements hereunder, provided that Beneficiary may at any time, in its sole discretion, rescind such waiver by notice, whereupon Trustor shall resume depositing such amounts in the manner required herein.

3. INSURANCE AND REPAIRS. Trustor shall procure, with Beneficiary's approval and at Trustor's expense, fire and extended coverage insurance insuring any improvements and buildings constituting part of the Trust Estate for an amount no less than the amount of

the unpaid principal balance of the Note. Such insurance policy shall contain a standard mortgage clause in favor of Beneficiary and shall not be cancelable, terminable or modifiable without ten (10) days prior written notice to Beneficiary. Trustor shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall the Trustor commit waste on or to the Trust Estate, nor destroy, dismantle, or materially alter any structure on the premises without prior payment in full of the promissory note secured hereby.

Trustor shall deposit with Beneficiary on the first business day of each and every calendar month, until all Obligations hereunder are paid in full, a non-interest-bearing amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust. Trustor further agrees to cause a copy of all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and provided Trustor has deposited sufficient funds pursuant hereto, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited, pursuant hereto. In its sole discretion, Beneficiary may waive Trustor's Obligation to comply with the deposit requirements hereunder, provided that Beneficiary may, at any time thereafter, in its sole discretion, may rescind such waiver by notice, whereupon Trustor shall resume depositing such amounts in the manner required hereunder. If Beneficiary waives Trustor's Obligation to deposit amounts in the manner described above, Trustor shall pay all insurance premiums at least thirty (30) days prior to their due dates and shall, within ten (10) days of such payment, deliver proof thereof to Beneficiary

4. ACTIONS AFFECTING TRUST ESTATE. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Trustor and without such manner and to such extent as either may deem necessary to protect the security hereof. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorney's fees. Any such costs and expenses not paid within ten (10) days of written demand shall draw interest at the default rate provided in the Note.

5. EMINENT DOMAIN. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner including deed in lieu of condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Trustor (the "Proceeds") are hereby assigned to Beneficiary, and the Trustor agrees to execute such further assignments of the proceeds as Beneficiary or Trustee may require.

6. APPOINTMENT OF SUCCESSOR TRUSTEE. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of the applicable law of the State of Nebraska substitute a successor or successors to the Trustee named herein or acting hereunder.

7. SUCCESSORS AND ASSIGNS. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

8. INSPECTIONS. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

9. TRANSFER OF THE PROPERTY, ASSUMPTION. If all or any part of the Trust Estate or any interest therein is sold or transferred by Trustor without Beneficiary's prior written consent, excluding (1) the creation of a lien or encumbrance subordinate to this Deed of Trust, (2) the creation of a purchase money security interest for fixtures or equipment, (3) that certain part of the property conveyed above bordering on the north of the property line to the east property line, adjacent to the Valentino's restaurant property, in a rectangle shape. (The parties acknowledge that they have not obtained a legal description for this property, and upon the sale of said portion of property, Trustor shall provide Beneficiary a legal description of the property satisfactory to Beneficiary.) (4) a transfer by devise, dissent or by operation of law upon the death of a joint tenant, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable. Beneficiary may waive such option to accelerate if Trustor's successor in interest has executed a written assumption agreement accepted, in writing, by Beneficiary, and in that event, Beneficiary, at Beneficiary's sole discretion, may release Trustor from all obligations under this Deed of Trust and the Note.

If Beneficiary exercises such option to accelerate, Beneficiary shall mail Trustor notice of acceleration in accordance with paragraph 17 hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Trustor may pay the sums declared due. If Trustor fails to pay such sums prior to the expiration of such period. Beneficiary may, without further notice or demand on Trustor, invoke any remedies permitted by paragraph 11 hereof.

10. EVENTS OF DEFAULT. Any of the following events shall be deemed an event of default hereunder:

- (a) Trustor shall have failed to make payment of any installment of interest, principal, or principal and interest or any other sum secured hereby when due; or
- (b) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained herein.

11. ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES. Except as provided in paragraph 9 hereof, upon Trustor's breach of any covenant or agreement of Beneficiary in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Beneficiary, prior to Acceleration, shall mail this notice to Trustor as provided in paragraph 17 hereof, specifying (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is mailed to Trustor, by which such breach must be cured; and (4) the failure to cure such breach on or before the date specified in the notice may result an acceleration of the sum secured by this Deed of Trust and sale of the "Trust Estate". The notice shall further inform Trustor of the right to reinstate after acceleration and sale. If the breach is not cured on or before the date specified in the notice, Beneficiary, at Beneficiary's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.

If the power of sale is invoked, Trustee shall record a notice of default in each county in which the property or some part thereof is located and shall mail copies of such notice in the manner prescribed by applicable law to Trustor and to the other persons prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. Trustee, without demand on Trustor, shall sell the Trust Estate at public auction, to the highest bidder at the time and place and under the terms designated in the notice of sale, in one or more parcels, and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the property by public announcement at the time and place of any

previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the property at any sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the Purchaser, Trustee's deed conveying the Trust Estate sold. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order:

- (a) To all reasonable costs and expenses of the sale, including but not limited to, Trustee's fees, reasonable attorney's fees and costs of title evidence;
- (b) To all sums secured by this Deed of Trust; and
- (c) The excess, if any, to the person or persons legally entitled thereto.

12. TRUSTOR'S RIGHT TO REINSTATE. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings at any time prior to the earlier to occur of (1) the fifth day before the sale of the property pursuant to the power of sale contained in this Deed of Trust or (2) entry of a judgment enforcing this Deed of Trust if (a) Trustor pays Beneficiary all sums which would be then due under this Deed of Trust and the breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust and in enforcing Beneficiary's and Trustee's remedies as provided in paragraph 11 hereof, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Trust Estate, and Trustor's obligation to pay the sums secured by this Deed of Trust Shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

13. REMEDIES NOT EXCLUSIVE. Trustee and Beneficiary, and each of them shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or hereafter in force, notwithstanding some or all of the such indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law.

14. REQUEST FOR NOTICE. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to them at the address set forth in the first paragraph of this Deed of Trust.

15. GOVERNING LAW. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of this Deed of Trust conflicts with applicable laws, such conflicts shall not affect other provisions which can be given effect without the conflicting provision, and to this end, the provisions of the Deed of Trust are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

16. RECONVEYANCE BY TRUSTEE. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trustee Estate then held hereunder. The Recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto".

17. NOTICES. Whenever Beneficiary, Trustor, or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

18. ACCEPTANCE BY TRUSTEE. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

19. WAIVER OF HOMESTEAD EXEMPTION. Trustor hereby waives the benefit of the homestead exemption as to this debt.

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

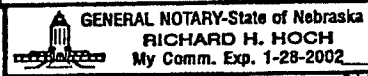
Richard Hoback  
Richard Hoback

Mary Hoback  
Mary Hoback

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF OTOE )

On this 21<sup>st</sup> day of April, 1999, before me, the undersigned Notary Public duly commissioned and qualified for said county, personally came Richard Hoback, to me known to be the identical person whose name is subscribed to the foregoing instrument, and that he acknowledge the execution thereof to be his voluntary act and deed.

WITNESS my hand and notarial seal at Nebraska City, Nebraska in the county and date aforesaid.

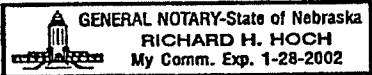


Richard H. Hoch  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF OTOE )

On this 21<sup>st</sup> day of April, 1999, before me, the undersigned Notary Public duly commissioned and qualified for said county, personally came Mary Hoback, to me known to be the identical person whose name is subscribed to the foregoing instrument, and that she acknowledge the execution thereof to be her voluntary act and deed.

WITNESS my hand and notarial seal at Nebraska City, Nebraska in the county and date aforesaid.



Richard H. Hoch  
Notary Public