

MISC 2011097161



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Fee amount: 133.50
FB: 0C-08150
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/14/2011 08:18:32.00



2011097161

PREPARED BY AND WHEN RECORDED,
PLEASE RETURN TO:

H. Daniel Smith
Smith, Gardner, Slusky, Lazer,
Pohren & Rogers, LLP
8712 West Dodge Road
Suite 400
Omaha, NE 68114
(402) 392-0101
(402) 392-1011
dsmith@smithgardnerslusky.com

FIFTH AMENDMENT TO LAND ACQUISITION LOAN AGREEMENT,
PROMISSORY NOTE AND
DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING STATEMENT

This Agreement is made and entered into this 1st day of August, 2011, by and between **AVG-CFM 204Q, LLC**, a Delaware limited liability company, CFM Realty Advisors, 1823 Harney St., Suite 100, Omaha, NE 68102, Omaha, NE 68102 (the "Borrower"), and **UNION BANK AND TRUST COMPANY**, a Nebraska state banking corporation, and its successors and/or assigns its Commercial Real Estate Lending Division's principal lending office, 2720 South 177th Street, Omaha, Nebraska 68130, Attn: Samantha Mosser (the "Lender").

PRELIMINARY STATEMENT

WHEREAS, on the 2nd day of November, 2006, the parties made and entered into certain Loan Documents as defined in the Land Acquisition Loan Agreement ("**Loan Agreement**"), including but not limited to the Loan Agreement, Promissory Note, and a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the "**Mortgage**") recorded November 3, 2006, at Record 2006126164 in the office of the Register of Deeds of Douglas County, Nebraska together with certain other agreements under which Lender was granted a first lien security interest in and to the Mortgaged Property as described in the Mortgage and as also described on the attached and incorporated Exhibit A hereto, the purpose of which was to secure the indebtedness of the Promissory Note, in the original principal amount of Nineteen Million Two Hundred Thousand and No/100ths Dollars (\$19,200,000.00) (the "**Note**"); and

WHEREAS, on the 1st day of November, 2009, the parties made and entered into that certain First Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded February 17, 2010, at Record 2010014467 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of May, 2010, the parties made and entered into that certain Second Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded June 14, 2010, at Record 2010051849 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of July, 2010, the parties made and entered into that certain Third Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded August 2, 2010, at Record 2010068278 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, on the 1st day of August, 2010, the parties made and entered into that certain Fourth Amendment to the Land Acquisition Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement and recorded November 1, 2010, at Record 2010101437 in the office of the Register of Deeds of Douglas County, Nebraska pursuant to which the Lender agreed to the Requested Actions as set forth therein; and

WHEREAS, the Lender has agreed to consent to the following requested actions (the “**Requested Actions**”): Extension of the Maturity Date and change in the Note Rate and other matters.

NOW THEREFORE, the parties agree:

ARTICLE 1

ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

1.1 **Incorporation of Recitals.** All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

1.2 **Authority of Borrower.** Borrower is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware, and authorized to do business in Nebraska. The execution and delivery of, and performance under, this Agreement by Borrower has been duly and properly authorized pursuant to all requisite company action and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Articles of Organization or Operating Agreement or any other organizational document of Borrower or (ii) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Borrower is a party or by which the Project may be bound or affected.

1.3 **Compliance with Laws.** To Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Project as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Borrower has not received any written notice from any governmental entity claiming that Borrower or the Project is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Project, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

1.4 **Title to Project and Legal Proceedings; Pledges of Equity in Borrower.** Borrower is the current owner of fee title in the Project. There are no pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Borrower or the Project, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Project, or any agreements to convey any portion of the Project, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement. The Project is not encumbered by any mortgage lien other than the lien created by the Loan Documents. The membership interests in Borrower are not encumbered by any mortgage, pledge, security interest or hypothecation.

1.5 **Loan Documents.** The Loan Documents constitute valid and legally binding obligations of Borrower enforceable against Borrower, as limited herein, and the Project in accordance with their terms. Borrower acknowledges and agrees that nothing contained in this Agreement, nor the Requested Actions, shall release or relieve Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the date hereof. All provisions of the Loan Documents not expressly modified herein or in other executed agreements between the parties are ratified and confirmed.

1.6 **Bankruptcy.** Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to

be filed against Borrower or any partners thereof or (iii) directly or indirectly to cause the Project or any portion or any interest of Borrower in the Project to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

1.7 **No Default.** To Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

1.8 **Reaffirmation.** Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

ARTICLE 2

ADDITIONAL PROVISIONS

2.1 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions, as follows:

- (a) **Amendment to the Note.** The Promissory Note is amended as follows:
 - i) The Note Rate, effective as of the date of this Agreement, shall be amended as follows:
 - a. The Note Rate shall be a floating rate that is reset on the first day of each month to a rate equal to, per annum, the Prime Rate then in effect.
 - b. In no event shall the Note Rate be below, per annum, four and fifty one hundredths per cent (4.50%).
 - c. "Prime Rate" means, on any day, the "Prime Rate" as published in The Wall Street Journal (Eastern Edition) on that day under the section "Money Rates", and being defined therein as "the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks". On days when The Wall Street Journal is not published, the Prime Rate shall be the "Prime Rate" stated in the most recently published edition of The Wall Street Journal. In the event that The Wall Street Journal ceases to be published altogether, or ceases to publish the "Prime Rate", then Lender, its assigns or successors, shall establish and choose a substitute Prime Rate which is based upon comparable information, in the exercise of its reasonable discretion, without any notice to the Borrower or any person being required. The Prime Rate is a reference rate and does not necessarily represent Lender's best or lowest rate or a favored rate, and Lender disclaims any statement, representation or warranty to the contrary.

d. The Note Rate shall be computed on a 365/360 basis; that is, by applying the ratio of the Note Rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under the Note shall be computed using this method. This calculation method results in a higher effective interest rate than any numeric interest rate stated herein.

ii) To extend the "Maturity Date" to November 1, 2011.

All other provisions of the Promissory Note are ratified and confirmed hereby and shall remain in full force and effect.

(b) **Amendment to the Loan Agreement.** The Loan Agreement is hereby amended as follows:

In the "Definitions" section the definition of "Maturity Date" is amended to November 1, 2011.

All other provisions of the Loan Agreement are ratified and confirmed hereby and shall remain in full force and effect.

(c) **Amendment to the Mortgage.** The Mortgage is hereby amended as follows:

All references to "Maturity Date" or references to when the loan matures or is due and payable in full, however stated, are amended to November 1, 2011.

All other provisions of the Mortgage are ratified and confirmed hereby and shall remain in full force and effect.

2.2 **Establishment of the Reserve.** Borrower shall wire and deposit into escrow upon the execution of this Agreement, and as a condition to the Lender approval of the Requested Actions, as follows: (a) \$302,741.00 earmarked for accrued interest; and (b) \$217,778.00 earmarked for real estate taxes, for a total of \$520,519.00 (the "Reserve") to be held by Fidelity National Title (the "Escrow Agent") pursuant to a separate Escrow and Control Agreement. If the Maturity Date of the Loan is further extended by Lender beyond the date set forth in this Agreement (subject to Lender's rights under Section 2.4 herein), the sums identified in this Section shall be applied to the purposes described in this Section upon Lender approval of such extension.

2.3 **Security Interest in Reserve.** As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in all sums on deposit or due under this Agreement and the other Loan Documents including, without

limitation, (i) the Reserve (ii) the accounts into which the Reserve has been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserve or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserve (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account or accounts into which the Reserve has been deposited being held in Lender's name and Borrower acknowledges and agrees that Lender shall have exclusive control over said account, subject only to the release provisions and limitations of the Escrow and Control Agreement pursuant to which the Reserve is held in escrow by the Escrow Agent. Borrower holds Lender harmless with respect to all risk of loss regarding amounts on deposit in the Reserve, except to the extent that any such loss is caused by the gross negligence or intentional misconduct of Lender.

The Reserve is solely for the protection of Lender and entails no responsibility on Lender's part beyond the payment of the respective costs and expenses in accordance with the terms thereof and beyond the allowing of due credit for the sums actually received. Upon full payment of the indebtedness secured hereby in accordance with its terms (or if earlier, the completion of the applicable conditions to release of the Reserve to Lender's satisfaction) or at such earlier time as Lender may elect, the balance in the Reserve then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

2.4 **No Consent To Other Modifications.** Borrower agrees that this Agreement shall not be deemed an agreement by Lender to consent to any other modification of the Loan Documents, including, without limitation, any extension of the Maturity Date of the Note or a consent to any additional financing, secondary financing or secondary encumbrance on the Project, or financing of any kind on any future phases of the Project or any other project.

2.5 **References to Loan Documents.** All references to the term Loan Documents in the Mortgage and the other Loan Documents shall hereinafter be modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions.

2.6 **Filing for Record.** This document may be filed for record in Douglas County, State of Nebraska by Lender.

ARTICLE 3

MISCELLANEOUS PROVISIONS

3.1 **Defined Terms.** All capitalized or defined terms shall have the meaning as set forth in the Loan Agreement unless the context of this Agreement clearly requires otherwise.

3.2 **Borrower's Claims.** Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender or any of Lender's predecessors in interest, and any subsidiary or affiliate of Lender and all of the past, present and future officers, directors, contractors, employees, agents, attorneys, representatives, participants, successors and assigns of Lender and Lender's predecessors in interest (collectively, "**Lender Parties**") or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Project. To the extent Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the date hereof, Borrower knowingly waives and relinquishes them.

3.3 **No Limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

3.4 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereto in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

3.5 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

3.6 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower at all times has had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and has had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties relating to this Agreement and its subject matter, if any, are totally superseded and merged into this

Agreement, subject to the reaffirmations set forth herein, and this Agreement represents the final and sole agreement of the parties with respect to the subject matter. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement is the free and voluntary act of Borrower. THIS WRITTEN AGREEMENT TOGETHER WITH THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OF THE PARTIES.

3.7 **Fees and Costs of Lender.** Borrower agrees to pay all fees and costs incurred by Lender in connection with this Agreement, including, without limitation, reasonable attorney's fees, title premiums, recording costs, escrow fees, mortgage or deed tax, and inspection or survey costs.

3.8 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

3.9 **Notices.** Any notice demand, consent, approval, request, or other communication or document required or permitted to be given by a party hereto to another party shall be deemed to have been given when (i) delivered personally (with written confirmation of receipt); (ii) sent by telefacsimile to a fax number as designated in writing by the party to whom the communication is addressed (with written confirmation of receipt), provided that a confirmation copy also is promptly mailed by certified mail, return receipt requested; (iii) received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested); or (iv) received by the addressee, if sent by certified mail, return receipt requested, to the address set forth below:

If to Borrower:	AVG-CFM 204Q, LLC CFM Realty Advisors 1823 Harney St., Suite 100, Omaha, NE 68102 Omaha, NE 68102 Attn: Terrance L. Fangman, Jr.
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If to Lender:	Union Bank and Trust Company
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2720 South 177th Street
Omaha, NE 68130
Attn: Samantha Mosser

with copy to:

Smith, Gardner, Slusky, Lazer,
Pohren & Rogers, LLP
8712 West Dodge Road
Suite 400
Omaha, NE 68114
Attn: H. Daniel Smith

Each party may change its address for notice from time to time by delivering written notice as above provided at least ten (10) days prior to the effective date of such change.

3.10 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Nebraska.

3.11 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

3.12 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

3.13 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

3.14 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

LENDER:

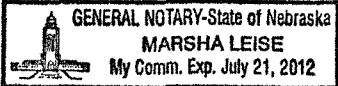
UNION BANK AND TRUST COMPANY, a
Nebraska state banking corporation:

By Samantha Mosser
Samantha Mosser, Regional President

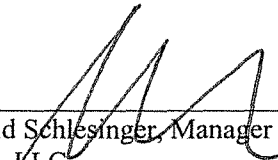
STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me this 29th day of September, 2011, by Samantha Mosser, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which she acted, executed the instrument. She is the Regional President of Union Bank and Trust Company, a Nebraska state banking corporation, for and on behalf of said Union Bank and Trust Company, and she acknowledged, signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

Marsha Leise
Notary Public



AVG-CFM 204Q, LLC, a Delaware limited liability company:

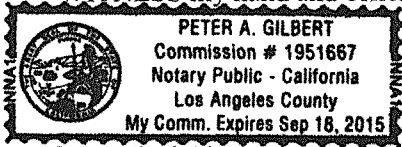
By: 
Arnold Schlesinger, Manager of AVG-CFM 204Q, LLC

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

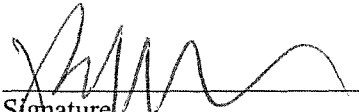
On 9-27 _____, 2011, before me, Peter A. Gilbert, Notary Public, personally appeared Arnold Schlesinger, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

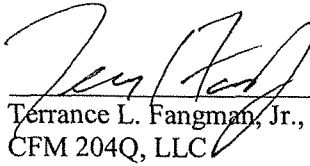
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above


Signature
Notary Public

By: 
Terrance L. Fangman, Jr., Manager of AVG-
CFM 204Q, LLC

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 29 day of September, 2011, by Terrance L. Fangman, Jr., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Manager of AVG-CFM 204Q, LLC, for and on behalf of said AVG-CFM 204Q, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.


Notary Public



VERA GUERIN, TRUSTEE of the VERA
GUERIN SEPARATE PROPERTY TRUST
1992

By *Vera Guerin*
Vera Guerin, Trustee

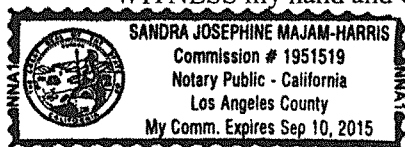
STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

ss.

On October 11, 2011, before me, Sandra Josephine Majam-Harris,
Notary Public, personally appeared Vera Guerin, Trustee of the Vera Guerin Separate
Property Trust 1992, who proved to me on the basis of satisfactory evidence to be the
person whose name is subscribed to the within instrument and acknowledged to me that
she executed the same in her authorized capacity, and that by her signature on the
instrument the person, or entity upon behalf of which the person acted, executed the
instrument.

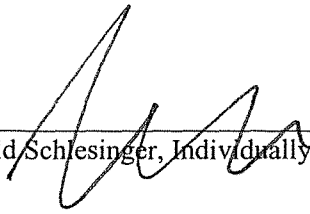
I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Sandra Josephine Majam-Harris
Signature
Notary Public



Arnold Schlesinger, Individually

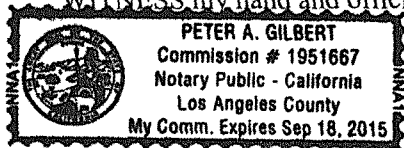
STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

ss.

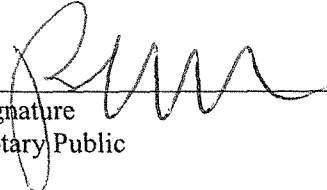
On 9-27-, 2011, before me, Peter A. Gilbert,
Notary Public, personally appeared Arnold Schlesinger, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument
and acknowledged to me that he executed the same in his authorized capacity, and that by
his signature on the instrument the person, or entity upon behalf of which the person
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above



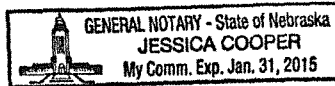
Signature
Notary Public

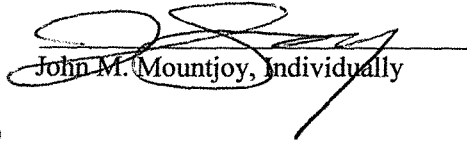
Joseph F. Carter
Joseph F. Carter, Individually

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me, a Notary Public, this 28 day of September, 2011, by Joseph F. Carter, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

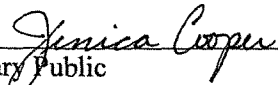
Jessica Cooper
Notary Public

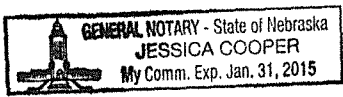



John M. Mountjoy, Individually

STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 29 day of September, 2011, by John M. Mountjoy, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.


Notary Public



(01-60000)

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE NE1/4 OF SECTION 12, AND ALSO THE SE1/4 OF SAID SECTION 12; ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NW SE
NE SW SE
SE SE

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S87°37'25"W (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID SE1/4 OF SECTION 12, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S87°37'25"W ALONG SAID SOUTH LINE OF THE SE1/4 OF SECTION 12, A DISTANCE OF 1316.16 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HARRISON STREET; THENCE N02°22'35"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HARRISON STREET, A DISTANCE OF 50.00 FEET TO THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF SAID HARRISON STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF SPENCE STREET; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF SPENCE STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE N47°25'32"W, A DISTANCE OF 7.08 FEET; THENCE N02°28'29"W, A DISTANCE OF 207.19 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 300.00 FEET, A DISTANCE OF 242.74 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N25°39'28"W, A DISTANCE OF 236.20 FEET; THENCE N48°50'03"W, A DISTANCE OF 397.64 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LINE OF SPENCE STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET; THENCE N03°50'03"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET, A DISTANCE OF 7.07 FEET; THENCE N41°09'57"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET, A DISTANCE OF 1241.37 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LINE OF JEFFERSON STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE ON THE FOLLOWING DESCRIBED COURSES; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 450.00 FEET, A DISTANCE OF 59.04 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N52°35'34"W, A DISTANCE OF 59.00 FEET; THENCE N48°50'03"W, A DISTANCE OF 128.86 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 750.00 FEET, A DISTANCE OF 419.80 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N32°47'56"W, A DISTANCE OF 414.35 FEET; THENCE S73°14'11"W, A DISTANCE OF 10.00 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 760.00 FEET, A DISTANCE OF 89.60 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N13°23'11"W, A DISTANCE OF 89.54 FEET; THENCE N65°29'13"E, A DISTANCE OF 75.10 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 460.00 FEET, A DISTANCE OF 482.12 FEET, SAID CURVE HAVING A LONG

CHORD WHICH BEARS N01°08'57"E, A DISTANCE OF 460.36 FEET; THENCE N31°10'29"E, A DISTANCE OF 60.19 FEET TO THE WESTERLY CORNER OF LOT 86, COVENTRY, A SUBDIVISION LOCATED IN THE NE1/4 OF SAID SECTION 12, AND THE SE1/4 OF SAID SECTION 12, AND THE EAST 1/2 OF THE NW1/4 OF SAID SECTION 12; THENCE S58°49'31"E ALONG THE SOUTHWESTERLY LINE OF SAID LOT 86, COVENTRY, A DISTANCE OF 290.00 FEET TO THE SOUTHERLY CORNER OF SAID LOT 86, COVENTRY; THENCE N31°10'29"E ALONG THE SOUTHEASTERLY LINE OF SAID LOT 86, COVENTRY, A DISTANCE OF 260.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY ON THE FOLLOWING DESCRIBED COURSES; THENCE S58°49'31"E, A DISTANCE OF 243.35 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 550.00 FEET, A DISTANCE OF 323.54 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S75°40'38"E, A DISTANCE OF 318.89 FEET; THENCE N87°28'15"E, A DISTANCE OF 188.10 FEET; THENCE S43°59'38"E, A DISTANCE OF 39.73 FEET TO THE POINT OF INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF GEORGE B. LAKE PARKWAY AND THE WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE S04°32'29"W, A DISTANCE OF 246.68 FEET; THENCE S00°56'28"E, A DISTANCE OF 1500.54 FEET; THENCE S05°57'26"E, A DISTANCE OF 824.89 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 3,301,220 SQUARE FEET OR 75.786 ACRES, MORE OR LESS.

AND

DISTRICT ANNEXATION, DOUGLAS COUNTY S. & I.D. NO. 524

(01-60000)

A TRACT OF LAND LOCATED IN THE NE1/4 OF SECTION 12, TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 98, COVENTRY, A SUBDIVISION LOCATED IN SAID NE1/4 OF SECTION 12, AND THE SE1/4 OF SAID SECTION 12, AND THE EAST 1/2 OF THE NW1/4 OF SAID SECTION 12, SAID POINT ALSO BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE S86°51'38"W (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID LOT 98, COVENTRY, A DISTANCE OF 276.50 FEET TO THE NORTHWEST CORNER OF SAID LOT 98, COVENTRY; THENCE S02°15'09"E ALONG THE WEST LINE OF SAID LOT 98, COVENTRY, A DISTANCE OF 34.57 FEET TO THE NORTHEAST CORNER OF LOT 97, SAID COVENTRY; THENCE S87°45'24"W ALONG THE NORTH LINE OF SAID LOT 97, COVENTRY AND

NW NE
NE NE
SW NE
SE NE

ALSO THE NORTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE, A DISTANCE OF 405.21 FEET TO THE POINT OF INTERSECTION OF SAID NORTH RIGHT-OF-WAY LINE OF COVENTRY DRIVE AND THE WESTERLY RIGHT-OF-WAY LINE OF SAID COVENTRY DRIVE; THENCE S02°15'09"E ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE, A DISTANCE OF 382.62 FEET; THENCE S42°44'51"W ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE, A DISTANCE OF 7.07 FEET TO THE POINT OF INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE AND THE NORTHERLY RIGHT-OF-WAY LINE OF "V" STREET; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF "V" STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE S87°44'51"W, A DISTANCE OF 275.36 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 801.39 FEET, A DISTANCE OF 489.99 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S70°13'53"W, A DISTANCE OF 482.39 FEET; THENCE N85°45'54"W, A DISTANCE OF 7.47 FEET TO THE POINT OF INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE OF "V" STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF 207TH STREET; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF 207TH STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 335.00 FEET, A DISTANCE OF 50.73 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N48°49'57"W, A DISTANCE OF 50.68 FEET; THENCE NORTHERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 465.55 FEET, A DISTANCE OF 431.12 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N26°38'29"W, A DISTANCE OF 415.88 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 765.00 FEET, A DISTANCE OF 342.57 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N12°42'59"E, A DISTANCE OF 339.71 FEET; THENCE N25°32'42"E, A DISTANCE OF 180.99 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 200.00 FEET, A DISTANCE OF 54.94 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N33°24'55"E, A DISTANCE OF 54.77 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 200.00 FEET, A DISTANCE OF 54.94 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N33°24'55"E, A DISTANCE OF 54.77 FEET; THENCE N25°32'42"E, A DISTANCE OF 154.76 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 945.72 FEET, A DISTANCE OF 140.48 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N21°17'22"E, A DISTANCE OF 140.36 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LINE OF 207TH STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE ON THE FOLLOWING DESCRIBED COURSES; THENCE N60°51'34"E, A DISTANCE OF 7.20 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 602.97 FEET, A DISTANCE OF 177.34 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S83°49'36"E, A DISTANCE OF 176.71 FEET; THENCE N87°44'51"E, A DISTANCE OF 50.87 FEET TO THE POINT

OF INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE AND THE EASTERLY RIGHT-OF-WAY LINE OF SAID COVENTRY DRIVE; THENCE N02°15'09"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF COVENTRY DRIVE, AND ALSO THE EASTERLY LINE OF LOT 79, SAID COVENTRY, A DISTANCE OF 350.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 79, COVENTRY, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF "Q" STREET; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF "Q" STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE N87°44'51"E, A DISTANCE OF 138.90 FEET; THENCE S02°15'40"E, A DISTANCE OF 21.53 FEET; THENCE S85°58'44"E, A DISTANCE OF 359.77 FEET; THENCE N87°28'59"E, A DISTANCE OF 552.62 FEET TO THE POINT OF INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF "Q" STREET AND SAID WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF 204TH STREET ON THE FOLLOWING DESCRIBED COURSES; THENCE S02°11'10"E, A DISTANCE OF 780.54 FEET; THENCE S04°29'01"W, A DISTANCE OF 69.76 FEET; THENCE S03°08'26"E, A DISTANCE OF 104.99 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 1,740,401 SQUARE FEET OR 39.954 ACRES, MORE OR LESS.

AND

Lots 79, 80, 81, 82, 86, 90, 92, 93, 94, 95, 96, 97, 98, and Outlots C, D, and E, Coventry, a Subdivision, in Douglas County, Nebraska.

(0C-08150)