

FILED SARPY CO. NE.

INSTRUMENT NUMBER

2003-27404

2003 MAY 20 P 1:59 R

*Glenn J. Lawing*

REGISTER OF DEEDS

Counter DD  
 Verify LM  
 D.E. SM  
 Proof RM  
 Fee \$ 25.50  
 Ck  Cash  Chg  SEC

**WHEN RECORDED MAIL TO:**

Great Western Bank  
 Harvey Oaks  
 6015 N.W. Radial Hwy.  
 P.O. Box 4070  
 Omaha, NE 68104-0070

FOR RECORDER'S USE ONLY

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

**SUBORDINATION OF DEED OF TRUST**

**THIS SUBORDINATION OF DEED OF TRUST dated March 24, 2003, is made and executed among PHOENIX BROOK VALLEY RE-CAP, LLC, A NEBRASKA LIMITED LIABILITY COMPANY ("Beneficiary"); JERRY SLUSKY ("Trustee"); PHOENIX PROPERTIES, LLC, A NEBRASKA LIMITED LIABILITY COMPANY ("Borrower"); and Great Western Bank ("Lender").**

**SUBORDINATED INDEBTEDNESS.** Beneficiary has extended the following described financial accommodations (the "Subordinated Indebtedness") to PHOENIX PROPERTIES, LLC, A NEBRASKA LIMITED LIABILITY COMPANY ("Trustor"):

**SUBORDINATED DEED OF TRUST.** The Subordinated Indebtedness is secured by a deed of trust dated September 25, 2002 from Trustor to Trustee in favor of Beneficiary (the "Subordinated Deed of Trust") recorded in SARPY County, State of Nebraska as follows:

**DATED SEPTEMBER 25, 2002, FILED SEPTEMBER 27, 2002 AS INSTRUMENT NUMBER 2002-38082, SARPY COUNTY, NEBRASKA.**

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

LOT 24, IN BROOK VALLEY BUSINESS PARK, A SUBDIVISION, IN SARPY COUNTY, NEBRASKA, EXCEPT THE NORTH 45 FEET THEREOF.

The Real Property or its address is commonly known as 7001 SOUTH 109TH STREET, LAVISTA, NE 68128. The Real Property tax identification number is 011229039

**REQUESTED FINANCIAL ACCOMMODATIONS.** Borrower, who may or may not be the same entity as Trustor, and Beneficiary each want Lender to provide financial accommodations to Borrower (the "Superior Indebtedness") in the form of (A) new credit or loan advances, (B) an extension of time to pay or other compromises regarding all or part of Borrower's present indebtedness to Lender, or (C) other benefits to Borrower. Borrower and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these financial accommodations from Lender to Borrower, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

**LENDER'S LIEN.** As a condition to the granting of the requested financial accommodations, Lender has required that it's deed of trust or other lien on the Real Property ("Lender's Lien") be and remain superior to the Subordinated Deed of Trust.

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

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

**BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.** Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Borrower's request and not at the request of Lender; (C) Lender has made no representation to Beneficiary as

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

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to the creditworthiness of Borrower; and (D) Beneficiary has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Borrower.

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

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

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

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

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

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

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

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

**Governing Law.** This Subordination will be governed by, construed and enforced in accordance with federal law and the laws of the State of Nebraska. This Subordination has been accepted by Lender in the State of Nebraska.

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

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

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

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE**

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

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**EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

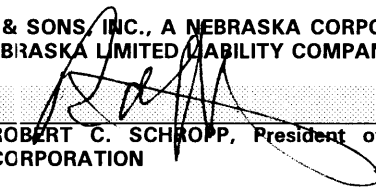
EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED MARCH 24, 2003.

**BORROWER:**

PHOENIX PROPERTIES, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

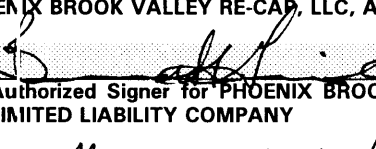
By:   
LEO E. DAHLKE, Member of PHOENIX PROPERTIES, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

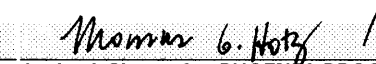
RCS & SONS, INC., A NEBRASKA CORPORATION, Member of PHOENIX PROPERTIES, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

By:   
ROBERT C. SCHROPP, President of RCS & SONS, INC., A NEBRASKA CORPORATION


**BENEFICIARY:**

PHOENIX BROOK VALLEY RE-CAP, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

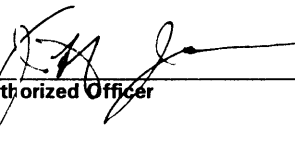
By:   
Authorized Signer for PHOENIX BROOK VALLEY RE-CAP, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

By:   
Authorized Signer for PHOENIX BROOK VALLEY RE-CAP, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

**TRUSTEE:**

X   
JERRY SLUSKY, Individually

**LENDER:**

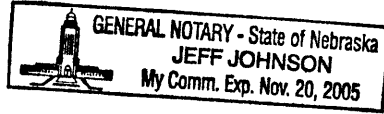
X  CLO  
Authorized Officer

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

Loan No: 5121157

**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**

STATE OF Nebraska )  
 ) SS  
COUNTY OF Douglas )

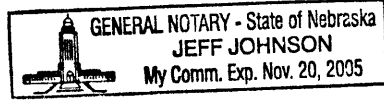


On this 4th day of April, 2009, before me, the undersigned Notary Public, personally appeared LEO E. DAHLKE, Member of PHOENIX PROPERTIES, LLC, A NEBRASKA LIMITED LIABILITY COMPANY; ROBERT C. SCHROPP, President of RCS & SONS, INC., A NEBRASKA CORPORATION, and known to me to be partners or designated agents of the limited liability company that executed the Subordination of Deed of Trust and acknowledged the Subordination to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Subordination and in fact executed the Subordination on behalf of the limited liability company.

By [Signature]  
Notary Public in and for the State of Nebraska  
Residing at Douglas County  
My commission expires 11/20/05

**LLC ACKNOWLEDGMENT**

STATE OF Nebraska )  
 ) SS  
COUNTY OF Douglas County )



On this 4th day of April, 2009, before me, the undersigned Notary Public, personally appeared Bennett Ginsberg and Thomas G. Hotz, authorized signers for Phoenix Brook Valley Re-cap, LLC, A Nebraska Limited Liability Company.

By [Signature]  
Notary Public in and for the State of Nebraska  
Residing at Douglas County  
My commission expires 11/20/05

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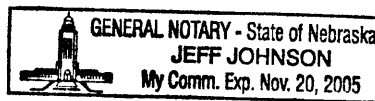
**SUBORDINATION OF DEED OF TRUST  
(Continued)**

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**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF Nebraska )  
 ) SS  
COUNTY OF Douglas )



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

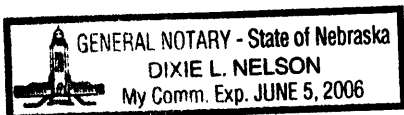
Given under my hand and official seal this 4th day of April, 2003.

By [Signature]  
Notary Public in and for the State of Nebraska  
Residing at Douglas County  
My commission expires 11/20/05

**LENDER ACKNOWLEDGMENT**

STATE OF NEBRASKA )  
 ) SS  
COUNTY OF DOUGLAS )

On this 4th day of April, 2003, before me, the undersigned Notary Public, personally appeared Jeff Johnson and known to me to be the Comm. L. Officer, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.



By [Signature]  
Notary Public in and for the State of NE  
Residing at Omaha, NE  
My commission expires 6-5-06