



<b>Nebr Doc Stamp Tax</b>
Date
\$
By

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

99 DEC 30 PM 3: 54

35446 RECEIVED

FEE 25 FB 02-18521

BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP ex

DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

(The above space for use of Register of Deeds)

**DEED OF TRUST**

THIS DEED OF TRUST is made by and among GERALD L. KUEHN ("Trustor") and his wife, MARY BETH KUEHN, whose mailing address is 16604 Westfield Circle, Omaha, Nebraska 68130, and MICHAEL G. LESSMANN, TRUSTEE under this Deed of Trust, Attorney at Law, 1500 Woodmen Tower, Omaha, Nebraska 68102, ("Trustee"), and KARL GUNNAR MOSSBLAD ("Beneficiary"), whose mailing address is 1819 North 95<sup>th</sup> Plaza, Omaha, Nebraska 68114.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 in Douglas County, Nebraska, particularly described as **Lot Two (2) in Isabel Addition Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska**, together with, all rents, easements, appurtenances, hereditaments, interests in adjoining roads, improvements and tenements of any kind now or hereafter situated thereon (the "Trust Estate"), but subject to:

- (i) all covenants, reservations, restrictions, easements and other agreements now of record;
- (ii) zoning regulations and other ordinances of the governing municipalities and authorities (i.e., federal, state and local) in which the premises lie; and
- (iii) all real estate taxes, and special assessments hereafter levied and assessed;

to have and to hold the Trust Estate in fee simple, with all rights, privileges and appurtenances thereto belonging to Trustor and Trustor's heirs and assigns, and all right, title, claim, interest and benefit therein. Trustor warrants with Trustee that Trustor is lawfully seised of the Trust Estate and has good right and lawful authority to grant, convey and mortgage the same and that Trustor will forever warrant and defend the title to the Trust Estate, subject to the matters above stated, against all lawful claims of all persons.

**THIS DEED OF TRUST IS GIVEN FOR THE PURPOSE OF SECURING:**

(a) payment of an indebtedness to Beneficiary in the original principal amount of **SIXTY-THREE THOUSAND AND NO/100 DOLLARS (\$63,000.00)**, plus interest thereon, as evidenced by that certain promissory note of this date (the "Note") executed by Trustor, which Note has been delivered and is payable to the order of Beneficiary with a final stated maturity date of January 1, 2008, and which Note and any and all modifications, extensions and/or renewals thereof, if any, and/or any and all future advances thereunder, if any, by this reference, are hereby made a part hereof; and

(b) payment and performance by Trustor under that certain Stock Purchase and Sale Agreement and Stock Promissory Note both of even date herewith, pertaining to his purchase of 120 shares of common stock in Porter-Trustin-Carlson Co., a Nebraska corporation, until such time as the above \$63,000.00 Note and Trustor's other obligations under this Deed of Trust are paid in full, whereupon this Deed of Trust shall be released in its entirety and Beneficiary shall execute and deliver to Trustor a deed of reconveyance.

(c) payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate of 12.75% per annum.

This Deed of Trust, the Note, the documents referred to in clause (b) above according to its terms, 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, TRUSTOR HEREBY AGREES AS FOLLOWS:**

1. **PAYMENT OF INDEBTEDNESS.** Trustor shall pay when due all installments of the principal of, and the interest on, the indebtedness evidenced by the Note, and all charges, fees and all

other sums as provided in the Loan Instruments.

2. **TAXES.** Trustor shall pay, and shall indemnify and hold harmless Trustee and Beneficiary from, each installment of all taxes and special assessments of every kind, now or hereafter levied and assessed against the Trust Estate, or any part thereof, or upon this Deed of Trust or the indebtedness secured hereby, before delinquency, without notice or demand, and shall, upon request from Trustee or Beneficiary, provide evidence of the payment of same.

3. **INSURANCE, REPAIRS AND IMPROVEMENTS.**

(a) Trustor shall maintain public liability insurance and fire and extended coverage insurance insuring any improvements and buildings hereafter constituting any part of the Trust Estate for an amount no less than the amount of the unpaid principal balance of the Note or this Deed of Trust and, in any event, in an amount sufficient to prevent the operation of any co-insurance provisions in such policies. Such insurance policy shall contain a standard mortgage clause in favor of Beneficiary.

(b) Trustor shall promptly repair, maintain and replace the Trust Estate and any part thereof, in its present condition except for ordinary wear and tear. In no event shall Trustor commit waste on or to the Trust Estate.

4. **ACTIONS AFFECTING TRUST ESTATE.** Trustor shall appear in and contest any action or proceeding purporting to affect the Trust Estate or the rights or powers of the Beneficiary or Trustee hereunder, and shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or do any act as and in the manner provided in any of the Loan Instruments, Beneficiary and/or Trustee, each in their own discretion, without obligation to do so and after written notice to or demand upon Trustor and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect their respective interest in and to the Trust Estate. Trustor shall, immediately upon demand therefor by Beneficiary or Trustee, pay all costs and expenses incurred by Beneficiary or Trustee in connection with the exercise by Beneficiary or Trustee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

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 a deed in lieu of condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding any 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 not exceeding the amount then due or to be due under any of the Loan Instruments. Beneficiary shall be entitled, at its sole option, to commence, appear in and prosecute in its own name any such action or proceedings. All such compensation, awards, damages, rights of action and proceeds awarded to Trustor (not exceeding the amount then due to Beneficiary pursuant to the Loan Instruments) (the "Proceeds") are hereby assigned to Beneficiary and Trustor shall execute such further assignments of the Proceeds as Beneficiary or Trustee may require.

6. **ASSIGNMENT OF RENTS.** Trustor assigns and transfers to Beneficiary, and grants a security interest to Beneficiary in, all of the present, future or after-arising rents and revenues of the Trust Estate due by virtue of any leases or other licenses, or agreements for the occupancy or use of all or any part of the Trust Estate. Trustor authorizes Beneficiary to collect all rents and revenues and hereby directs each tenant of the Trust Estate to pay rents directly to Beneficiary; provided, however, that prior to the occurrence of an Event of Default under this instrument, Trustor shall have a license to collect and receive all rents and revenues of the Trust Estate and to enjoy the use thereof. It is the intent of Trustor and Beneficiary that this assignment of rents constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. After the occurrence of an Event of Default under this instrument and so long as such Event of Default shall be continuing, and without the necessity of Beneficiary entering upon and taking full control of the Trust Estate, in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Trust Estate both past due and unpaid and as they become due and payable. After the occurrence of an Event of Default under this instrument and so long as such Event of Default shall be continuing, all such rents held, or thereafter received, by Trustor shall be held as trustee for the benefit of Beneficiary only. After the occurrence of an Event of Default under this instrument and so long as such Event of Default shall be continuing, Trustor agrees that each tenant of the Trust Estate shall be entitled to pay rents directly to Beneficiary on Beneficiary's written demand to each tenant delivered to each tenant personally or by mail, without any obligation on the part of any tenant to inquire as to the existence of a default by Trustor.

7. **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.

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

9. **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.

10. **EVENTS OF DEFAULT.** Any of the following events shall be deemed an "Event of Default" hereunder:

(a) If Trustor fails to pay any installment of interest, principal or principal and interest under the Note or any other sum secured hereby when due; or

(b) If a material breach of or a default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments occurs which is not cured after 30 days written notice.

11. **ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES.** Should an Event of Default occur, then, subject to the provisions of the Nebraska Trust Deeds Act, Beneficiary may declare all indebtedness secured hereby to be immediately due and payable and the same shall thereupon become due and payable upon notice to Trustor and its opportunity to cure such Event of Default, all as expressly provided in the Note. Thereafter Beneficiary, at its sole option, may:

(a) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or any interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine; the entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits. Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon the occurrence of any Event of Default, **INCLUDING THE RIGHT TO EXERCISE THE POWER OF SALE;** or

(b) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver or specifically enforce any of the covenants hereof; or

(c) deliver to Trustee a written declaration of default and demand for sale, and a written Notice of Default and Election to cause Trustor's interest in the Trust Estate to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate Official Records of the County in which the Trust Estate is located and take all other steps authorized or allowed by the Nebraska Trust Deeds Act.

12. **FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Thereafter, and only in accordance with or as permitted by the Nebraska Trust Deeds Act:

(a) upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale and any other notice or document or instrument as then required by law and/or by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation and/or delivery of such Notice of Default, Notice of Sale and/or any other notice required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or

parcels or items as Trustee shall deem expedient, and in such order as Trustee may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof a good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. Any person, including, without limitation, Beneficiary (but specifically excluding the Trustor), may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers; and

(b) after deducting all costs, fees and expenses of Trustee and those allowed or permitted by the Loan Instruments, including attorneys fees and costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of 12.75% per annum, (ii) all other sums then secured hereby, and (iii) the remainder, if any, to the person or persons legally entitled thereto; and

(c) Trustee may in the manner provided by law postpone sale of all or any portion of the Trust Estate.

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 under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of 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 any 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 by 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 pursue inconsistent remedies.

14. **REQUESTS FOR NOTICE.** Trustor hereby requests a copy of any Notice of Default and any Notice of Sale hereunder be mailed to Trustor at Trustor's addresses set forth in the first paragraph of this Deed of Trust.

While hereby expressly reserving the priority of this Deed of Trust as established by law, Trustee and Beneficiary hereunder request that a copy of any Notice of Default and any Notice of Sale under any deed of trust recorded against the Trust Estate either prior to, if any, or subsequent to the date this Deed of Trust is recorded be mailed to each at the addresses set forth in the first paragraph of this Deed of Trust.

15. **GOVERNING LAW.** This Deed of Trust shall be governed by the Nebraska Trust Deeds Act. If any provision or any clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments 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. If more than one person comprises Trustor, all obligations of the Trustor hereunder shall be joint and several.

16. **RECONVEYANCE BY TRUSTEE.** Upon written request of Beneficiary stating that all sums under the above \$63,000.00 Note secured hereby have been paid, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

17. **TRANSFER OF TRUST ESTATE.** If all or any part of the Trust Estate, or any interest therein, is sold or transferred by Trustor, including, but not limited to, by an option to sell, a sale or transfer by deed or by land contract or by contract for deed, without Beneficiary's prior written consent (which consent shall not be unreasonably withheld), excluding the creation of a lien or encumbrance subordinate to this Deed of Trust, Beneficiary may, at Beneficiary's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

If Beneficiary exercises the foregoing option to accelerate, Beneficiary shall mail to Trustor a notice of acceleration which notice shall provide a period of not less than 30 days from the date the notice is mailed within which Trustor must 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 granted or permitted herein or provided by law.

18. **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 if the same is delivered in person or by personal service or mailed by registered or certified United States mail, postage prepaid, 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.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the 30 day of December, 1999.

**TRUSTOR:**

Gerald L. Kuehn  
Gerald L. Kuehn

Mary Beth Kuehn  
Mary Beth Kuehn

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing Deed of Trust was acknowledged before me on this 30<sup>th</sup> day of December, 1999, by Gerald L. Kuehn, and Mary Beth Kuehn, husband and wife.

Michael G. Lessmann  
Notary Public

My commission expires: 1-16-2002



After Recording,  
Return to:  
Michael G. Lessmann  
Attorney at Law  
1500 Woodmen Tower  
Omaha, Nebraska 68102

DOCS/394647.2