



MTG 2005108706



SEP 01 2005 12:11 P 55

Attention: Rick L. Schmitt

This instrument was drafted by:

Richard H. Massopust
Oppenheimer Wolff & Donnelly LLP
3300 Plaza VII
45 South Seventh Street
Minneapolis, Minnesota 55402-1609
(612)607-7000

Loan No. 43960

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
9/1/2005 12:11:18.53



2005108706

[Above space reserved for recording information.]

**DEED OF TRUST
AND
SECURITY AGREEMENT
AND
FIXTURE FINANCING STATEMENT**

DATED AS OF
~~August~~ 1, 2005
~~SEPTEMBER~~

GRANTED BY

GORDMAN 133RD & ARBOR, L.L.C., a Nebraska limited liability company

TO

COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation

FOR THE USE AND BENEFIT OF

THRIVENT FINANCIAL FOR LUTHERANS, a Wisconsin corporation

Loan No. 43960
4775/571; 8/29/05

mtg
55 REC 275.50 FB 60-28398
BRP _____ C/O _____ COMP *aj*
DE _____ SCAN _____ FV _____

16

TABLE OF CONTENTS

| | |
|--|----|
| ARTICLE 1. GENERAL REPRESENTATIONS AND WARRANTIES SECTION | 4 |
| SECTION 1.1 Representations and Warranties..... | 4 |
| SECTION 1.2 Continuing Obligation. | 7 |
| ARTICLE 2. COVENANTS AND AGREEMENTS | 7 |
| SECTION 2.1 Payment of Indebtedness; Observance of Covenants. | 7 |
| SECTION 2.2 Maintenance; Repairs..... | 7 |
| SECTION 2.3 Payment of Operating Costs; Liens; and Other Indebtedness. | 8 |
| SECTION 2.4 Payment of Impositions. | 8 |
| SECTION 2.5 Contest of Liens and Impositions. | 8 |
| SECTION 2.6 Protection of Security. | 9 |
| SECTION 2.7 Annual Statements. | 9 |
| SECTION 2.8 Additional Assurances. | 10 |
| SECTION 2.9 Due on Sale or Mortgaging, etc. | 11 |
| SECTION 2.10 Maintenance of Existence. | 16 |
| SECTION 2.11 Building Use. | 16 |
| ARTICLE 3. INSURANCE AND ESCROWS | 17 |
| SECTION 3.1 Insurance. | 17 |
| SECTION 3.2 Escrows. | 18 |
| ARTICLE 4. UNIFORM COMMERCIAL CODE | 19 |
| SECTION 4.1 Security Agreement. | 19 |
| SECTION 4.2 Fixture Filing. | 20 |
| SECTION 4.3 Representations and Agreements. | 20 |
| SECTION 4.4 Maintenance of Premises. | 21 |
| SECTION 4.5 Pledge of Monies Held..... | 21 |
| ARTICLE 5. APPLICATION OF INSURANCE AND AWARDS | 22 |
| SECTION 5.1 Damage or Destruction of the Premises..... | 22 |
| SECTION 5.2 Condemnation. | 22 |
| SECTION 5.3 Beneficiary to Make Insurance Proceeds Available Under Certain Conditions. | 23 |
| SECTION 5.4 Disbursement of Insurance and Condemnation Proceeds..... | 23 |
| ARTICLE 6. LEASES AND RENTS..... | 25 |
| SECTION 6.1 Leases..... | 25 |
| SECTION 6.2 Beneficiary's Right to Perform Under Leases. | 25 |
| SECTION 6.3 Assignment of Leases and Rents. | 26 |
| ARTICLE 7. RIGHTS OF BENEFICIARY..... | 27 |
| SECTION 7.1 No Claim Against Beneficiary..... | 27 |
| SECTION 7.2 Inspection..... | 27 |
| SECTION 7.3 Dishonored Payments. | 27 |
| SECTION 7.4 Waivers; Releases; Resort to Other Security. | 28 |
| SECTION 7.5 Waiver of Appraisalment, Homestead, Marshaling..... | 28 |
| ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES | 28 |
| SECTION 8.1 Events Of Default. | 28 |
| SECTION 8.2 Remedies..... | 30 |

Loan No. 43960
4775/571; 8/29/05

i i

SECTION 8.3 Application of Proceeds.....33
 SECTION 8.4 Right to Cure Defaults.....33
 SECTION 8.5 Receiver.....33
 SECTION 8.6 Rights Under Uniform Commercial Code.....34
 SECTION 8.7 Right to Discontinue Proceedings.....34
 SECTION 8.8 Waivers.....34
 SECTION 8.9 Default Interest and Late Charges.....35
 SECTION 8.10 Rights Cumulative.....35
 SECTION 8.11 Trustor Not Released.....35
 ARTICLE 9. HAZARDOUS MATERIALS.....35
 SECTION 9.1 Definitions.....35
 SECTION 9.2 Environmental Representations and Warranties.....37
 SECTION 9.3 Environmental Covenants.....38
 SECTION 9.4 Beneficiary’s Right to Inspect and Conduct Testing.....39
 SECTION 9.5 Indemnification.....39
 ARTICLE 10. MISCELLANEOUS.....39
 SECTION 10.1 Release of Deed of Trust.....39
 SECTION 10.2 Time of the Essence.....40
 SECTION 10.3 Governing Law.....40
 SECTION 10.4 Jurisdiction.....40
 SECTION 10.5 Interest Limitation.....40
 SECTION 10.6 Use of Loan and Premises.....41
 SECTION 10.7 Captions.....41
 SECTION 10.8 Notices.....41
 SECTION 10.9 Severability.....41
 SECTION 10.10 Successors and Assigns.....41
 SECTION 10.11 No Oral Modification.....42
 SECTION 10.12 Indemnity.....42
 SECTION 10.13 Representations of Trustor.....42
 SECTION 10.14 Beneficiary’s Expenses.....43
 SECTION 10.15 Beneficiary’s Right to Counsel.....43
 SECTION 10.16 Other Representations and Warranties.....44
 SECTION 10.17 Survival of Representations, Warranties and Covenants.....44
 SECTION 10.18 Waiver of Jury Trial.....44
 SECTION 10.19 Minimum Requirement.....44
 SECTION 10.20 Reproduction of Documents.....44
 SECTION 10.21 Partial Non-Recourse to Trustor.....45
 ARTICLE 11. STATE SPECIFIC PROVISIONS.....45
 SECTION 11.1 Incorporation of State Law Provisions.....45

Loan No. 43960
 4775/571; 8/29/05

1 1

DEED OF TRUST
AND
SECURITY AGREEMENT
AND
FIXTURE FINANCING STATEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (“**Deed of Trust**”) is made and delivered as of ~~August~~^{SEPTEMBER} 1, 2005, by GORDMAN 133RD & ARBOR, L.L.C., a Nebraska limited liability company (collectively, if more than one, “**Trustor**”), having a mailing address of c/o Gordman Properties Company, 444 Regency Parkway Drive, Suite 202, Omaha, Nebraska 68114, to COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation (“**Trustee**”), having a mailing address of c/o Spence Title Services, Inc., 1905 Harney Street – Suite 212, Omaha, Nebraska, 68102, for the benefit of THRIVENT FINANCIAL FOR LUTHERANS, a Wisconsin corporation (“**Beneficiary**”), having a mailing address of: Thrivent Financial for Lutherans, Attention: Loan Administration - Mortgage and Real Estate Investments, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

WITNESSETH:

WHEREAS, Trustor is indebted to Beneficiary, as evidenced by that certain Promissory Note (“**Note**”) of even date herewith, in the original principal sum of Three Million and 00/100 Dollars (\$3,000,000.00) (“**Loan**”), both principal and interest of the Note being payable at the office of Beneficiary as more specifically set forth therein.

WHEREAS, Trustor and Beneficiary desire and intend that the Note be secured by: (1) this Deed of Trust; (2) an Assignment of Leases and Rents from Trustor, as assignor, in favor of Beneficiary, as assignee, of even date herewith; (3) Financing Statements; and (4) other and sundry documents and agreements. This Deed of Trust and all other documents and agreements given as security for the Note are referred to collectively as the “**Loan Documents**” and singularly as a “**Loan Document**”.

NOW, THEREFORE, Trustor, in consideration of the sums advanced to Trustor under the Note, in hand paid by Beneficiary, the receipt and sufficiency of which is hereby acknowledged, and to secure the payment of the principal, interest, and premium, if any, on the Note the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions or renewals thereof, due and payable with interest thereon as provided therein, the balance of said principal sum together with interest thereon being due and payable in any event on September 15, 2020 (“**Maturity Date**”), and shall repay to Beneficiary, its successors or assigns, at the times demanded and with interest thereon at the same rate specified in the Note, all sums advanced in protecting the lien of this Deed of Trust, in payment of taxes on the “**Premises**” (as that term is hereinafter defined), in payment of insurance premiums covering improvements thereon, in payment of principal and interest on prior liens, in payment of waste protection, in payment of expenses and actual attorneys’ fees herein provided for and all sums advanced for any other purpose authorized herein (the Note and

Loan No. 43960
4775/571; 8/29/05

all such sums, together with interest thereon, being hereinafter collectively referred to as the “**Indebtedness**”) and to secure the performance by Trustor of each and every term, covenant, agreement and condition contained in the Note and the Loan Documents, Trustor does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY UNTO TRUSTEE, ITS SUCCESSORS AND ASSIGNS, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, AND GRANTS TO BENEFICIARY A SECURITY INTEREST IN the following properties to secure payment of the Indebtedness (all of the following being hereafter collectively referred to as the “**Premises**”):

GRANTING CLAUSES

A. Real Property. All the tracts or parcels of real property lying and being in the County of Douglas, State or Commonwealth of Nebraska (“**Real Property**”) all as more fully described in Exhibit “A” attached hereto and which is hereby incorporated into this Deed of Trust by reference, together with all the estates and rights in and to the Real Property, and in and to lands lying in streets, alleys and roads or gores of land adjoining the Real Property, all minerals, oil, gas and other hydrocarbon substances on, in and under the Real Property, as well as all development rights, air rights, water, water rights, water stock, mineral or oil rights, parking rights and general intangibles relating to, generated from, arising out of or incidental to the Real Property, its ownership, development or use.

B. Improvements, Fixtures, Equipment and Personal Property. All buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the Real Property and all proceeds and products derived therefrom whether now owned or hereafter acquired; and all equipment (including Trustor’s interest in any lease of such equipment), fixtures, improvements, building supplies and materials and personal property owned by Trustor now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the land including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and plants, stoves, ranges, ovens, refrigerators, air conditioners, dishwashers, clothes dryers, washing machines, disposals and compactors (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Trustor in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of Trustor at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises, but excluding therefrom the removable personal property owned by tenants in the Premises.

Loan No. 43960
4775/571; 8/29/05

C. Rents, Leases and Profits. All rents, issues, income, revenue, receipts, fees, and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of Trustor in and to any lease, license, sublease, contract or other kind of occupancy agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all security therefor and all monies payable thereunder, including, without limitation, tenant security deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to Trustor to collect the rents, income and other normal income benefits arising under any agreements. Beneficiary shall have the right, not as a limitation or condition hereof but as a personal covenant available only to Beneficiary, at any time and from time to time, to notify any lessee of the rights of Beneficiary hereunder.

Together with all right, title and interest of Trustor in and to any and all contracts for sale and purchase of all or any part of the property described in these Granting Clauses A, B and C hereof, and any down payments, earnest money deposits or other sums paid or deposited in connection therewith.

D. Judgments, Condemnation Awards, Insurance Proceeds, and Other Rights. All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Premises, including any awards for a temporary taking, change of grade of streets or taking of access, together with all insurance proceeds resulting from a casualty to any portion of the Premises; all rights and interests of Trustor against others, including adjoining property owners, arising out of damage to the property including damage due to environmental injury or release of hazardous substances.

E. Licenses, Permits, Equipment Leases and Service Agreements. All right, title and interest of Trustor in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements and equipment or chattel leases, service contracts or agreements, tradenames, any and all other intangibles, including general intangibles, and all proceeds therefrom, arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Premises, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law.

F. Proceeds. All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the Premises described in Granting Clauses A through E herein.

Trustor makes the foregoing grant to Trustee to hold the Premises in trust for the benefit of Beneficiary and for the purposes and upon the terms and conditions hereinafter set forth.

TO HAVE AND TO HOLD THE SAME, together with the possession, right of possession of the Premises, and with full POWER OF SALE, unto Trustee for the benefit of Beneficiary, its successors and assigns, forever.

Loan No. 43960
4775/571; 8/29/05

PROVIDED NEVERTHELESS, that if Trustor, Trustor's heirs, administrators, personal representatives, successors or assigns, shall pay to Beneficiary, its successors or assigns, the full amount of the Indebtedness as and when due, and shall keep and perform all of the covenants and agreements herein contained, then this Deed of Trust shall become null and void, and shall be released at Trustor's expense, otherwise this Deed of Trust to remain in full force and effect.

ARTICLE 1.

GENERAL REPRESENTATIONS AND WARRANTIES SECTION

SECTION 1.1 Representations and Warranties.

Trustor represents and warrants to Beneficiary, its successors and assigns, that, as of the date hereof:

- (a) Trustor, for Trustor, Trustor's administrators, personal representatives, successors and assigns, covenants with Beneficiary, its successors and assigns, that Trustor is lawfully seized of the Premises and has good right to sell and convey the same.
- (b) The Premises are free from all encumbrances except as may be set forth in Schedule B of that certain ALTA Mortgagee's Policy of Title Insurance issued to Beneficiary by Commonwealth Land Title Insurance Company and insuring the first lien position of this Deed of Trust ("**Permitted Encumbrances**").
- (c) Beneficiary, its successors and assigns, shall quietly enjoy and possess the Premises.
- (d) Trustor, its successors and assigns, will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Deed of Trust. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Deed of Trust.
- (e) Trustor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nebraska, is duly qualified to do business in all states in which it is required to be so qualified, and has all requisite power and authority to enter into this Deed of Trust and to perform its obligations hereunder; the execution, delivery and performance of this Deed of Trust by Trustor has been duly and validly authorized; and all requisite action has been taken by Trustor to make this Deed of Trust valid and binding upon Trustor, enforceable in accordance with its terms.
- (f) Neither Trustor nor any member of Trustor is or will become a "Person" described by Section 1 of The Anti-Terrorism Executive Order 13,224 of September 23, 2001 blocking property and prohibiting transactions with Persons who commit, threaten to commit, or support terrorism, 66 Fed. Reg. 49,049 (2001), or described in any rule or regulation implementing the same and, to the

Loan No. 43960
4775/571; 8/29/05