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FILED SARPY COUNTY NEBRASKA  
 INSTRUMENT NUMBER

2013-19626

06/20/2013 10:08:52 AM

*Clay J. Dowling*

REGISTER OF DEEDS



When Recorded, Please Return To:  
 Frank J. Mihulka  
 Woods & Aitken LLP  
 10250 Regency Circle, Suite 525  
 Omaha, NE 68114

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

**DEED OF TRUST, ASSIGNMENT OF RENTS AND  
 SECURITY AGREEMENT AND SEPARATE ASSIGNMENT OF LEASES  
 AND RENTS FIRST MODIFICATION AGREEMENT**

[THIS MODIFICATION AGREEMENT (A) MODIFIES THE LEGAL DESCRIPTION OF THE PROPERTY BY ADDING AN ADDITIONAL PARCEL THAT IS DEEMED HEREBY TO BE ENCUMBERED BY THE LIENS OF THE DEED OF TRUST AND THE ASSIGNMENT, AS DEFINED BELOW, AND IN THE SAME RELATIVE LIEN PRIORITY, AND (B) INCREASES THE AMOUNT OF THE DEBT ENCUMBERED BY THE LIENS OF THE DEED OF TRUST AND THE ASSIGNMENT]

Loan No. \_\_\_\_\_

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT AND SEPARATE ASSIGNMENT OF LEASES AND RENTS FIRST MODIFICATION AGREEMENT ("Modification") is made to be effective as of June ~~12~~<sup>24</sup> 2013, by and between by DOWD GRAIN COMPANY, INC., a Nebraska corporation (as to Parcels D, E and F and as to an undivided three-fourths interest in Parcel B, as described on Exhibit "A" attached hereto), and DUANE J. DOWD and FRANCES DEE DOWD, husband and wife (as to Parcels A and C and as to an undivided one-fourth interest in Parcel B, as described on Exhibit "A" attached hereto) (individually and collectively, jointly and severally "Borrower") and FOUNDATION FIRST BANK, its successors and assigns ("Lender").

**WITNESSETH:**

A. On or about April 5, 2013, Borrower executed and delivered to Lender a Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust"), which was recorded in the Office of the Register of Deeds of Sarpy County, Nebraska on April 8, 2013 as Instrument No. 2013-10960 and encumbers, among other things, the real property described on Exhibit "A" attached thereto and hereto as Parcels A, B, C, D and E; and

B. On or about April 5, 2013, Borrower executed and delivered to Lender an Assignment of Leases and Rents ("Assignment"), which was recorded in the Office of the Register of Deeds of Sarpy County, Nebraska on April 8, 2013 as Instrument No. 2013-10961 and encumbers, among other things, the leases, rents and profits derived from the real property and improvements described on Exhibit "A" attached thereto and hereto as Parcels A, B, C, D and E; and

C. The Deed of Trust and Assignment secure the payment and performance obligations of a Promissory Note dated April 5, 2013 ("Note") in the stated principal amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) (the "Loan"); and

D. Borrower has requested that Lender increase the stated principal amount of the Loan, whereby the stated principal amount that may be advanced under the Loan be increased to Three Million Six Hundred Thousand Dollars (\$3,600,000.00) pursuant to an Amended and Restated Promissory Note executed and delivered by Borrower to Lender (the "Restated Note"), and Borrower is willing to have the liens of the Deed of Trust and the Assignment secure the increased principal amount of the Restated Note and to encumber additional real property in connection therewith, described as Parcel F on the attached Exhibit "A"; and

E. As an inducement to Lender to enter into the transaction evidenced by the Restated Note, and in consideration of Lender doing so, Borrower is willing to execute and deliver this Modification in favor of Lender, and acknowledges good and sufficient consideration for entering into and delivering this Modification.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereto agree as follows:

1. Modification of Secured Amount of Deed of Trust and Assignment. Notwithstanding terms to the contrary in the Deed of Trust and in the Assignment, all references therein to "Loan" are hereby modified and changed from a loan in the stated principal amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) to a loan in the stated principal amount of Three Million Six Hundred Thousand Dollars (\$3,600,000.00) (the "Restated Loan"), and all references to a "Promissory Note" or "Note" shall mean and refer to the Restated Note executed on an even date herewith, in the stated principal amount of Three Million Six Hundred Thousand Dollars (\$3,600,000.00). The liens and encumbrances of the Deed of Trust and the Assignment shall be deemed to secure the payment obligations of Borrower in the full amount of the Restated Loan.

2. Modification of Legal Description of Real Property Secured by Deed of Trust and Assignment. The Deed of Trust and the Assignment are hereby modified to substitute and replace Exhibit "A" attached thereto with Exhibit "A" attached to this Modification, whereby Parcel F has been added to the real property description encumbered by the Deed of Trust and by the Assignment. All rights, obligations and liens arising in favor of Lender under the Deed of Trust and under the Assignment, and all covenants and agreements of Borrower therein, shall be deemed in all respects to apply to the real property as defined on Exhibit "A" attached hereto, as well as all Land, Improvements, Equipment, Rents, Licenses, Contracts, Leases and all other rights and things constituting the "Property", as defined in the Deed of Trust and, as applicable, in the Assignment.

3. Recording Fees and Title Insurance Premiums. All recording fees associated with the recording of this Modification with the Sarpy County Recorder and all premiums incurred by Lender in connection with increase in the amount of Lender's loan policy insurance amount shall be reimbursed to Lender by Borrower on demand and, if not paid when due, shall bear interest at the default rate set forth

in the Loan Documents from the due date until paid in full. In addition, failure to pay such fees shall constitute a default under this Modification and the Restated Loan.

4. Incorporation. All of the terms, conditions, obligations and representations of the Deed of Trust and of the Assignment are hereby incorporated herein by reference. In addition, and for avoidance of doubt, Dowd Grain Company, Inc., as the record owner of Parcel F, hereby irrevocably grants, bargains, sells, alienates, demises, conveys, assigns, transfers, mortgages, grants a security interest in, hypothecates, pledges, sets over to Lender and Trustee (as designated in the Deed of Trust) forever, IN TRUST WITH POWER OF SALE, all right, title and interest of Borrower in, to and under Parcel F.

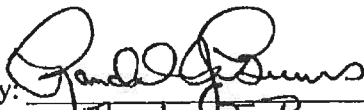
5. No Further Commitment. Borrower hereby acknowledges and agrees that this Modification modifies the Deed of Trust and the Assignment only to the extent and on the terms set forth herein, and this Modification is not, nor shall it be, construed as a commitment by Lender to modify the same in any other respect.

6. Further Assurances. Borrower agrees to execute and deliver such documents and to perform such other acts, promptly upon request, as Lender requests and which are, in Lender's reasonable judgment, necessary or appropriate to effectuate the purposes of this Modification.

7. Governing Law. This Modification shall be construed in accordance with the laws of the State of Nebraska.


IN WITNESS WHEREOF, the parties hereto have executed this Modification to be effective as of the date and year above first written.


FOUNDATION FIRST BANK, Lender

By:   
Name: RANDAL J. BUENS  
Title: President

DOWD GRAIN COMPANY, INC., a Nebraska corporation, DUANE J. DOWD and FRANCES DEE DOWD, husband and wife, Borrower

By: DOWD GRAIN COMPANY, INC., a Nebraska corporation

By:   
Duane J. Dowd, President

By:   
Lawrence W. Dowd,  
Secretary/Treasurer

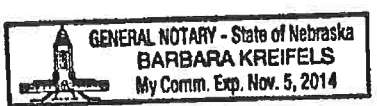
C

By: *Duane J. Dowd*  
Duane J. Dowd, Individually

By: *Frances Dee Dowd*  
Frances Dee Dowd, Individually

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

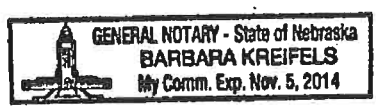
The foregoing Instrument was executed and acknowledged before me this 12<sup>th</sup> day of June, 2013 by Randal Burns, the President of Foundation First Bank, for and on behalf of the such Bank.



*Barbara Kreifels*  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

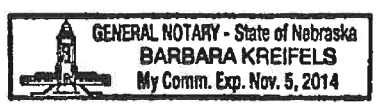
The foregoing Instrument was executed and acknowledged before me this 12<sup>th</sup> day of June, 2013 by Duane J. Dowd, the President of Dowd Grain Company, Inc., who acknowledged that he was the duly appointed and acting President of the Company and executed the foregoing Instrument in that capacity and for and on behalf of the Company as Borrower.



*Barbara Kreifels*  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing Instrument was executed and acknowledged before me this 12<sup>th</sup> day of June, 2013 by Lawrence W. Dowd, the Secretary and Treasurer of Dowd Grain Company, Inc., who acknowledged that he was the duly appointed and acting Secretary and Treasurer of the Company and executed the foregoing Instrument in that capacity and for and on behalf of the Company as Borrower.



*Barbara Kreifels*  
Notary Public

D

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing Instrument was executed and acknowledged before me this 12<sup>th</sup> day of June, 2013 by Duane J. Dowd and Francis Dee Dowd, husband and wife, as Borrower.



*Barbara Kreifels*  
\_\_\_\_\_  
Notary Public

E

**EXHIBIT "A"**  
**Legal Description of Land**

Parcel A:

That part of the South 1/2 of the Southwest 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, lying South and East of I-80; except road right of way; and except that part conveyed to the State of Nebraska, Department of Roads by Warranty Deed filed August 9, 2002 at Instrument No. 2002-30491.

Parcel B:

The North 1/2 of the Southeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, lying South and East of I-80; also described as Tax Lot 8 in Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska; subject to road right of way; and except that part conveyed to the State of Nebraska, Department of Roads by Warranty Deed filed August 9, 2002 at Instrument No. 2002-30491;

And

The South 1/2 of the Southeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska; subject to road right of way; and except that part described as follows: Beginning at a point 818.4 feet West of the Southeast corner of Section 34; thence North 917.4 feet; thence West 475.2 feet; thence South 917.4 feet; thence East 475.2 feet to the point of beginning.

Parcel C:

A parcel of land located in the South 1/2 of the Southeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, more particularly described as follows: Beginning at a point 818.4 feet West of the Southeast corner of Section 34; thence North 917.4 feet; thence West 475.2 feet; thence South 917.4 feet; thence East 475.2 feet to the point of beginning; subject to road right of way.

Parcel D:

That part of the Northeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, lying South and East of Interstate 80 and Nebraska Highway 370; subject to road right of way; and except that part conveyed to the State of Nebraska, Department of Roads by Quitclaim Deed filed June 6, 2002 at Instrument No. 2002-21117.

Parcel E:

Tax Lot 7 in Section 35, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, as conveyed by Quitclaim Deed from the State of Nebraska dated March 26, 2002 and filed on June 7, 2002 at Instrument No. 2002-21276.

## Parcel F:

The South 1/2 of the Southeast 1/4 of Section 26, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska; excepting therefrom those portions conveyed to the State of Nebraska in Warranty Deed filed in book 102, page 112 and Warranty Deed filed as Instrument No. 99-027378, more particularly described as follows: Beginning at the Southeast corner of the Southeast 1/4; thence Westerly a distance of 2,646.22 feet along the Southerly line of said Quarter Section to the Southwest corner of said Quarter Section; thence Northerly deflecting  $090^{\circ}22'23''$  right, along the Westerly line of said Quarter Section for a distance of 122.19 feet; thence Easterly deflecting  $088^{\circ}03'27''$  right, a distance of 1,294.48 feet; thence continuing Easterly deflecting  $006^{\circ}28'49''$  left, a distance of 604.07 feet; thence continuing Easterly  $012^{\circ}42'18''$  left, a distance of 612.87 feet; thence Northerly deflecting  $065^{\circ}43'41''$  left, a distance of 862.68 feet to a point on the Northerly line of the said South 1/2 of said Quarter Section; thence Easterly deflecting  $086^{\circ}38'41''$  right, along the said Northerly line of the South 1/2 of said Quarter Section for a distance of 140.30 feet to the Northeast corner of the said South 1/2 of said Quarter Section; thence Southerly deflecting  $090^{\circ}24'52''$  right, along the Easterly line of said Quarter Section for a distance of 1,322.61 feet to the point of beginning.