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Dan Jolte

REGISTER OF DEEDS

2001 NOV 20 P 3: 31

LANCASTER COUNTY, NE

\$20.50

INST. NO 2001

069053

BLOCK

CODE

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Charge CAP \$10.50

DEED OF TRUST WITH FUTURE ADVANCES

THIS DEED OF TRUST, is made as of the 20th day of November, 2001, by and among the Trustor, Steven E. Miers, a single person, whose mailing address is 6000 South 56th Street, Lincoln, NE 68516 (herein "Trustor", whether one or more), the Trustee, WEST GATE BANK whose mailing address is 5555 SOUTH 27TH STREET, LINCOLN, NEBRASKA 68512 (herein "Trustee"), and the Beneficiary, WEST GATE BANK whose mailing address is 5555 SOUTH 27TH STREET, LINCOLN, NEBRASKA 68512 (herein "Lender").

FOR VALUABLE CONSIDERATION, including Lender's extension of credit identified herein to Steven E. Miers (herein "Borrower", whether one or more) and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Lender, under and subject to the terms and conditions hereinafter set forth, the real property, described as follows:

THE VACATED MISSOURI PACIFIC RAILROAD RIGHT-OF-WAY LYING IN THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER, SECTION 21, TOWNSHIP 10 NORTH, RANGE 7 EAST, LINCOLN, LANCASTER COUNTY, NEBRASKA

AND

ALL THAT PART OF THE VACATED MISSOURI PACIFIC RAILROAD RIGHT-OF-WAY LYING NORTHWESTERLY OF NORTH 66TH STREET IN THE SOUTHWEST QUARTER, SECTION 21, TOWNSHIP 10 NORTH, RANGE 7 EAST, EXCEPT THAT PART TAKEN BY THE CITY OF LINCOLN, NEBRASKA IN CONDEMNATION FILED OCTOBER 17, 1996 AS INSTRUMENT NUMBER 96-42114 IN THE OFFICE OF THE REGISTER OF DEEDS OF LANCASTER COUNTY, NEBRASKA.

AKA: 66TH & VINE STREET, LINCOLN, NEBRASKA

Together with all buildings, improvements, fixtures, streets, alleys, passageways, easements, rights, privileges and appurtenances located thereon or in anywise pertaining thereto, and the rents, issues and profits, reversions and remainders thereof, and such personal property that is attached to the improvements so as to constitute a fixture, including, but not limited to, heating and cooling equipment; and together with the homestead or marital interests, if any, which interests are hereby released and waived; all of which, including replacements and additions thereto, is hereby declared to be a part of the real estate secured by the lien of this Deed of Trust and all of the foregoing being referred to herein as the "Property".

This Deed of Trust shall secure (a) the payment of the principal sum and interest evidenced by a Promissory Note or Credit Agreement dated November 20, 2001, having a maturity date of November 15, 2004, in the original principal amount of \$612,000.00, and any and all modifications, extensions and renewals thereof or thereto and any and all future advances and readvances to Borrower (or any of them if more than one) hereunder pursuant to one or more Promissory Notes or Credit Agreements (herein called "Note"); (b) the payments of other sums advanced by Lender to protect the security of the Note; (c) the performance of all covenants and agreements of Trustor set forth herein; and (d) all present and future indebtedness and obligations of Borrower (or any of them if more than one) to Lender whether direct, indirect, absolute or contingent and whether arising by Note, Guaranty, overdraft or otherwise. The Note, this Deed of Trust and any and all other documents that secure the Note or otherwise executed in connection therewith, including without limitation Guarantees, Security Agreements and Assignments of Leases and Rents, shall be referred to herein as the "Loan Instruments".

Trustor covenants and agrees with Lender as follows:

1. Payment of Indebtedness. All indebtedness secured hereby shall be paid when due.

2. Title. Trustor is the owner of the Property, has the right and authority to convey the Property, and warrants that the lien created hereby is a first and prior lien on the Property, except for liens and encumbrances set forth by Trustor in writing and delivered to Lender before execution of this Deed of Trust, and the execution and delivery of this Deed of Trust does not violate any contract or other obligation to which Trustor is subject.

3. Taxes, Assessments. To pay before delinquency all taxes, special assessments and all other charges against the Property now or hereafter levied.

NE 1/4 SW 1/4 21-10-7
NE 1/4 SE 1/4 21-10-7

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4. Insurance. To keep the Property insured against damage by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require, in amounts and with companies acceptable to Lender, naming Lender as an additional named insured, with loss payable to the Lender. In case of loss under such policies, the Lender is authorized to adjust, collect and compromise, all claims thereunder and shall have the option of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Lender may determine, (ii) to the Trustor to be used for the repair or restoration of the Property or (iii) for any other purpose or object satisfactory to Lender without affecting the lien of this Deed of Trust for the full amount secured hereby before such payment ever took place. Any application of proceeds to indebtedness shall not extend or postpone the due date of any payments under the Note, or cure any default thereunder or hereunder.

5. Escrow. Upon written demand by Lender, Trustor shall pay to Lender, in such manner as Lender may designate, sufficient sums to enable Lender to pay as they become due one or more of the following: (i) all taxes, assessments and other charges against the Property, (ii) the premiums on the property insurance required hereunder, and (iii) the premiums on any mortgage insurance required by Lender.

6. Maintenance, Repairs and Compliance with Laws. Trustor shall keep the Property in good condition and repair; shall promptly repair, or replace any improvement which may be damaged or destroyed; shall not commit or permit any waste or deterioration of the Property; shall not remove, demolish or substantially alter any of the improvements on the Property; shall not commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance, or regulation; and shall pay and promptly discharge at Trustor's cost and expense all liens, encumbrances and charges levied, imposed or assessed against the Property or any part thereof.

7. Eminent Domain. Lender is hereby assigned all compensation, awards, damages and other payments or relief (hereinafter "Proceeds") in connection with condemnation or other taking of the Property or part thereof, or for conveyance in lieu of condemnation. Lender shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings, and shall also be entitled to make any compromise or settlement in connection with such taking or damage. In the event any portion of the Property is so taken or damaged, Lender shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Lender may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Property upon such conditions as Lender may determine. Any application of Proceeds to indebtedness shall not extend or postpone the due date of any payments under the Note, or cure any default thereunder or hereunder. Any unapplied funds shall be paid to Trustor.

8. Performance by Lender. Upon the occurrence of an Event of Default hereunder, or if any act is taken or legal proceeding commenced which materially affects Lender's interest in the Property, Lender may in its own discretion, but without obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation, do any act which Trustor has agreed but fails to do and may also do any other act it deems necessary to protect the security hereof. Trustor shall, immediately upon demand therefor by Lender, pay to Lender all costs and expenses incurred and sums expended by Lender in connection with the exercise by Lender of the foregoing rights, together with interest thereon at the default rate provided in the Note, which shall be added to the indebtedness secured hereby. Lender shall not incur any liability because of anything it may do or omit to do hereunder.

9. Hazardous Materials. Trustor shall keep the Property in compliance with all applicable laws, ordinances and regulations relating to industrial hygiene or environmental protection (collectively referred to herein as "Environmental Laws"). Trustor shall keep the Property free from all substances deemed to be hazardous or toxic under any Environmental Laws (collectively referred to herein as "Hazardous Materials"). Trustor hereby warrants and represents to Lender that there are no Hazardous Materials on or under the Property. Trustor hereby agrees to indemnify and hold harmless Lender, its directors, officers, employees and agents, and any successors to Lender's interest, from and against any and all claims, damages, losses and liabilities arising in connection with the presence, use, disposal or transport of any Hazardous Materials on, under, from or about the Property. THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND TRUSTOR'S OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL SURVIVE RECONVEYANCE OF THIS DEED OF TRUST.

10. Assignment of Rents. Trustor hereby assigns to Lender the rents, issues and profits of the Property; provided that Trustor shall, until the occurrence of an Event of Default hereunder, have the right to collect and retain such rents, issues and profits as they become due and payable. Upon the occurrence of an Event of Default, Lender may, 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 Property, or any part thereof, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Property, 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 attorney's fees, upon any indebtedness secured hereby, all in such order as Lender may determine. The entering upon and taking possession of the Property, 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 and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, and Trustee and Lender shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any Event of Default, including without limitation the right to exercise the power of sale. Further, Lender's rights and remedies under this paragraph shall be cumulative with, and in no way a limitation on, Lender's rights and remedies under any assignment of leases and rents recorded against the Property. Lender, Trustee and the receiver shall be liable to account only for those rents actually received.

11. Events of Default. The following shall constitute an Event of Default under this Deed of Trust:

- (a) Failure to pay any installment of principal or interest of any other sum secured hereby when due;
- (b) A breach of or default under any provision contained in the Note, this Deed of Trust, any of the Loan Instruments, or any other lien or encumbrance upon the Property;
- (c) A writ of execution or attachment or any similar process shall be entered against Trustor which shall become a lien on the Property or any portion thereof or interest therein;
- (d) There shall be filed by or against Trustor or Borrower an action under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or there shall be appointed any trustee, receiver or liquidator of Trustor or Borrower or of all or any part of the Property, or the rents, issues or profits thereof, or Trustor or Borrower shall make any general assignment for the benefit of creditors;

(e) The sale, transfer, lease, assignment, conveyance or further encumbrance of all or any part of or any interest in the Property, either voluntarily or involuntarily, without the express written consent of Lender; provided that Trustor shall be permitted to execute a lease of the Property that does not contain an option to purchase and the term of which does not exceed one year;

(f) Abandonment of the Property; or

(g) If Trustor is not an individual, the issuance, sale, transfer, assignment, conveyance or encumbrance of more than a total of **N/A Percent** of (if a corporation) its issued and outstanding stock or (if a partnership) a total of **N/A Percent** of partnership interests during the period this Deed of Trust remains a lien on the Property.

12. Remedies. Acceleration Upon Default. In the event of any Event of Default Lender may, without notice except as required by law, declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Lender may:

(a) Demand that Trustee exercise the **POWER OF SALE** granted herein, and Trustee shall thereafter cause Trustor's interest in the Property to be sold and the proceeds to be distributed, all in the manner provided in the Nebraska Trust Deed Act;

(b) Exercise any and all rights provided for in any of the Loan Instruments or by law upon occurrence of any Event of Default; and

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

No remedy herein conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other remedy herein, in the Loan Instruments or by law provided or permitted, but each shall be cumulative, shall be in addition to every other remedy given hereunder, in the Loan Instruments or now or hereafter existing at law or in equity or by statute, and may be exercised concurrently, independently or successively.

13. Trustee. The Trustee may resign at any time without cause, and Lender may at any time and without cause appoint a successor or substitute Trustee. Trustee shall not be liable to any party, including without limitation Lender, Borrower, Trustor or any purchaser of the Property, for any loss or damage unless due to reckless or willful misconduct, and shall not be required to take any action in connection with the enforcement of this Deed of Trust unless indemnified, in writing, for all costs, compensation or expenses which may be associated therewith. In addition, Trustee may become a purchaser at any sale of the Property (judicial or under the power of sale granted herein); postpone the sale of all or any portion of the Property, as provided by law; or sell the Property as a whole, or in separate parcels or lots at Trustee's discretion.

14. Fees and Expenses. In the event Trustee sells the Property by exercise of power of sale, Trustee shall be entitled to apply any sale proceeds first to payment of all costs and expenses of exercising power of sale, including all Trustee's fees, and Lender's and Trustee's attorney's fees, actually incurred to extent permitted by applicable law. In the event Borrower or Trustor exercises any right provided by law to cure an Event of Default, Lender shall be entitled to recover from Trustor all costs and expenses actually incurred as a result of Trustor's default, including without limitation all Trustee's and attorney's fees, to the extent permitted by applicable law.

15. Future Advances. Upon request of Borrower, Lender may, at its option, make additional and future advances and readvances to Borrower. Such advances and readvances, with interest thereon, shall be secured by this Deed of Trust. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced to protect the security of this Deed of Trust, exceed the original principal amount stated herein, or **\$1,224,000.00**, whichever is greater.

16. Miscellaneous Provisions.

(a) *Borrower not released.* Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demands made by the original Borrower and Borrower's successors in interest.

(b) *Lender's Powers.* Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Lender may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligations, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Lender's option any parcel, portion or all of the Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

(c) *Forbearance by Lender Not a Waiver.* Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

(d) *Successors and Assigns Bound; Joint and Several Liability; Captions.* The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Trustor. All covenants and agreements of Trustor shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

(e) *Request for Notices.* The parties hereby request that a copy of any notice of default hereunder and a copy of any notice of sale hereunder be mailed to each party to this Deed of Trust at the address set forth above in the manner prescribed by applicable law. Except for any other notice required under applicable law to be given in another manner, any notice provided for in this Deed of Trust shall be given by mailing by such notice by certified mail addressed to the other parties, at the address set forth above. Any notice provided for in this Deed of Trust shall be effective upon mailing in the manner designated herein. If Trustor is more than one person, notice sent to the address set forth above shall be notice to all such persons.

(f) *Inspection.* Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Trustor notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

(g) *Reconveyance.* Upon payment of all sums secured by this Deed of Trust, Lender shall require a Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Trustor shall pay all costs of recordation, if any.

(h) *Personal Property; Security Agreement.* As additional security for the payment of the Note, Trustor hereby grants

Lender under the Nebraska Uniform Commercial Code a security interest in all fixtures, equipment, and other personal property used in connection with the real estate or improvements located thereon, and not otherwise declared or deemed to be a part of the real estate secured hereby. This instrument shall be construed as a Security Agreement under said Code, and the Lender shall have all the rights and remedies of a secured party under said Code in addition to the rights and remedies created under and accorded the Lender pursuant to this Deed of Trust; provided that Lender's rights and remedies under this paragraph shall be cumulative with, and in no way a limitation on, Lender's rights and remedies under any other security agreement signed by Borrower or Trustor.

(i) *Liens and Encumbrances.* Trustor hereby warrants and represents that there is no default under the provisions of any mortgage, deed of trust, lease or purchase contract describing all or any part of the Property, or other contract, instrument or agreement constituting a lien or encumbrance against all or any part of the Property (collectively, "Liens"), existing as of the date of this Deed of Trust, and that any and all existing Liens remain unmodified except as disclosed to Lender in Trustor's written disclosure of liens and encumbrances provided for herein. Trustor shall timely perform all of Trustor's obligations, covenants, representations and warranties under any and all existing and future Liens, shall promptly forward to Lender copies of all notices of default sent in connection with any and all existing or future Liens, and shall not without Lender's prior written consent in any manner modify the provisions of or allow any future advances under any existing or future Liens.

(j) *Application of Payments.* Unless otherwise required by law, sums paid to Lender hereunder, including without limitation payments of principal and interest, insurance proceeds, condemnation proceeds and rents and profits, shall be applied by Lender to the amounts due and owing from Trustor and Borrower in such order as Lender in its sole discretion deems desirable.

(k) *Severability.* If any provision of this Deed of Trust conflicts with applicable law or is declared invalid or otherwise unenforceable, such conflict or invalidity shall not affect the other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable.

(l) *Terms.* The terms "Trustor" and "Borrower" shall include both singular and plural, and when the Trustor and Borrower are the same person(s), those terms as used in this Deed of Trust shall be interchangeable.

(m) *Governing Law.* This Deed of Trust shall be governed by the laws of the State of Nebraska.

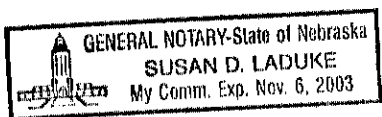
Trustor has executed this Deed of Trust as of the date written above.




Steven E. Miers

STATE OF NEBRASKA }
 }
 } ss..
COUNTY OF LANCASTER }

The foregoing Deed of Trust was acknowledged before me this 20th day of November, 2001 by Steven E. Miers, a single person, and were executed in the order set forth above.





Notary Public