



MTG

2003105357

RICHARD H. TAKECHI
REGISTERED DEEDS



JUN 03 2003 10:37 P 10

RECEIVED

Upon Recordation return to:
Patricia Schuett Peterson, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186

MTG

10
18

\$59 ⁰⁰ 05-25350	
FEE	FB
BKP	C/O COMP <i>[Signature]</i>
DEL	SCAN <i>[Signature]</i>

DEED OF TRUST AND ASSIGNMENT OF RENTS AND LEASES—1A

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS AND LEASES (this "Deed of Trust"), is made June 3, 2003 by **MIAMI HEIGHTS DEVELOPMENT CO., LLC**, a Nebraska limited liability company ("Trustor"), whose mailing address is c/o Michael B. Maroney, 3147 Ames Avenue, Omaha, Nebraska 68110, in favor of Elizabeth Jensen ("Trustee"), whose mailing address is 1650 Farnam Street, Omaha, Nebraska 68102, for the benefit of **NEBRASKA INVESTMENT FINANCE AUTHORITY**, a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions organized under the laws of the State of Nebraska ("Beneficiary"), whose mailing address is 200 Commerce Court, 1230 O Street, Lincoln, Nebraska 68508.

FOR VALUABLE CONSIDERATION RECEIVED, Trustor hereby 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, legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

TOGETHER WITH all rents, profits, crops, royalties, income and other benefits derived from the Property (collectively, the "rents"), all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, all right, title and interest of Trustor in and to any greater estate in the Property owned or hereafter acquired, all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property, all easements, rights-of-way, tenements, hereditaments and appurtenances thereof and thereto, all water rights, all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land, lying within the right-of-way of any street or highway adjoining the Property, and any and all alleys and strips and gores of land adjacent to or used in connection with the Property, and any and all buildings,

Box 35

fixtures and improvements now or hereafter erected thereon (the "Improvements"), and all the estate, interest, right, title or any claim or demand which Trustor now has or may hereafter acquire in the Property.

The Property and the entire estate and interest conveyed to the Trustee hereby are referred to collectively as the "Trust Property."

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Indebtedness"):

(i) Payment of indebtedness evidenced by that certain Owner Promissory Note dated as of even date herewith in the amount of \$500,000.00 executed by Trustor and payable to Beneficiary (the "Note"), together with all extensions, renewals, amendments and modifications thereof; and

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in that certain Tax Increment Financing Loan Agreement dated as of even date herewith between Trustor and Beneficiary (the "Loan Agreement"), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

This Deed of Trust, the Loan Agreement, the Note 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 "Security Instruments."

Trustor covenants that (i) Trustor holds title to the Trust Property and has lawful authority to encumber the Trust Property, (ii) the Trust Property is free and clear of all liens and encumbrances except for easements, restrictions and covenants now of record and (iii) Trustor will defend the Trust Property against the lawful claims of any person.

To Protect the Security of this Deed of Trust:

Section 1. Payment of Indebtedness and Performance of Duties. Trustor shall pay when due the principal of, and any interest on, the Indebtedness and all other sums and perform all of its duties and obligations as provided in the Security Instruments.

Section 2. Taxes. Trustor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Trust Property or any part thereof, before delinquency, without notice or demand and provide proof of such payment to Beneficiary from time to time upon Beneficiary's request.

Section 3. Insurance. Trustor shall maintain commercial general liability and property damage insurance covering Beneficiary and Trustor against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Trust Property or adjoining ways, streets or sidewalks for such amounts and on such terms satisfactory to Beneficiary.

Section 4. Actions Affecting Trust Property. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, 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.

Section 5. Eminent Domain. If the Trust Property, or any part thereof or interest therein, shall be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, including deed in lieu thereof, or if any part of the Trust Property shall be damaged by any casualty, or if Trustor receives any notice or other information regarding such proceedings, Trustor shall give prompt written notice thereof to Beneficiary. All insurance proceeds and condemnation awards shall be the sole property of Beneficiary.

Section 6. 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 Property 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.

Section 7. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns.

Section 8. Merger, Consolidation, Sales or Leases. Trustor covenants that Trustor will not sell, lease) or otherwise dispose of any of the Trust Property. Upon any such prohibited conveyance, the Indebtedness shall be due and payable in full to Beneficiary without notice or demand. The covenants contained herein shall run with the Property and shall remain in full force and effect until the Indebtedness is paid in full.

Section 9. Events of Default. Any of the following events shall be deemed an event of default hereunder:

- (a) default shall be made in the payment of the Indebtedness when due pursuant to the Note or any other Security Instrument;
- (b) Trustor shall perform any act in bankruptcy;
- (c) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Trustor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator or Trustor or of all or any part of the Trust Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Trustor and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive); or

(d) a breach of any covenant contained in this Deed of Trust or any other Security Instrument; provided however, except in the instance of a sale, lease or other transfer of the Trust Property, it shall not be an event of default under this Section 9(d) unless such breach remains uncured following 30 days written notice from Beneficiary to Trustor.

Section 10. Additional Remedies. If an event of default occurs, Beneficiary 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 Property, 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 Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust 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 attorneys' fees, upon the Indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust 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 Trust Property 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 Security Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale;

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

(c) in the event it elects to foreclose by power of sale as set forth below, 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 Property to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate offices of the County in which the Trust Property is located; or

(d) exercise such other rights or remedies available at law or in equity.

Section 11. Foreclosure by Power of Sale. If Beneficiary elects 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 any document evidencing the Indebtedness and such receipts and evidence of expenditures made and secured hereby as Trustee may reasonably require.

(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 as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation of such

Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Property 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 it 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 its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) As may be permitted by law, after deducting all costs, fees and expenses of Trustee, including costs of evidence of title in connection with the sale, Trustee shall apply the proceeds of the sale to payment of (i) the Indebtedness and (ii) the remainder, if any, to the person or persons legally entitled thereto.

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

Section 12. Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness and to exercise all rights and powers under this Deed of Trust or under any Security Instrument or any laws now or hereafter in force; notwithstanding, some or all of the 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 Security 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. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law.

Section 13. Request For Notice. Trustor and all other parties set forth herein hereby request a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to them at the address set forth in the first paragraph of this Deed of Trust.

Section 14. Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Nebraska. In the event that any provision or clause of

any of the Security Instruments conflicts with applicable laws, such conflict shall not affect other provisions of such Security Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Security 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.

Section 15. Reconveyance by Trustee. Once the Indebtedness secured hereby has been paid or the obligations to pay such Indebtedness is terminated Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

Section 16. 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 only if the same is delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, addressed to the appropriate address set forth in the first paragraph 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.

Section 17. Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee shall not be liable for any error of judgment or act done by Trustee or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Deed of Trust for debts contracted or liability or damages incurred in the management or operation of the Trust Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder or believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Trustor will, from time to time, pay compensation due Trustee hereunder and reimburse Trustee for and save and hold it harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by it in the performance of its duties.

All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law) and Trustee shall be under no liability for interest on any moneys received by it hereunder.

Section 18. Deed of Trust as a Financing Statement. This Deed of Trust will be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Trust Property and is to be filed for record in the real estate records of each county where any part of Trust Property (including said fixtures) is situated. This Deed of Trust also encumbers crops to be grown, timber to be cut and minerals to the extent Trustee has any interest

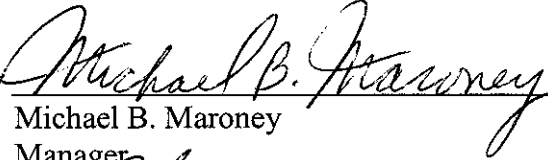
therein. This Deed of Trust shall also be effective as a financing statement covering any other premises and may be filed in any other appropriate filing or recording office. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this paragraph.

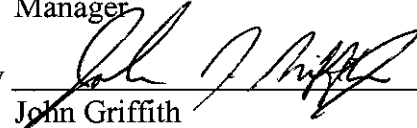
IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year acknowledged.

[Reminder of page intentionally left blank]

TRUSTOR:

MIAMI HEIGHTS DEVELOPMENT CO.,
LLC, a Nebraska limited liability company

By 
Michael B. Maroney
Manager

By 
John Griffith
Manager

[Signature Page to Miami Heights Collateral Deed of Trust]

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing Deed of Trust and Assignment of Rents and Leases—1B was acknowledged before me on June 2, 2003 by Michael B. Maroney, Manager of Miami Heights Development Co., LLC, a Nebraska limited liability company, on behalf of such limited liability company.

Given under my hand and notarial seal this 2nd day of June, 2003.

[SEAL]



Ann L. Atkinson
Notary Public

Ann L. Atkinson
(Type or Print Name)

My commission expires: 12-29-06

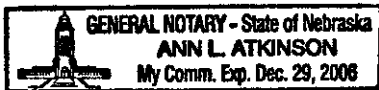
ACKNOWLEDGEMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing Deed of Trust and Assignment of Rents and Leases—1B was acknowledged before me on June 2, 2003 by John Griffith, Manager of Miami Heights Development Co., LLC, a Nebraska limited liability company, on behalf of such limited liability company.

Given under my hand and notarial seal this 2nd day of June, 2003.

[SEAL]



Ann L. Atkinson
Notary Public

Ann L. Atkinson
(Type or Print Name)

My commission expires: 12-29-06

EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 18, Miami Heights, an Addition to the City of Omaha, Douglas County, Nebraska