

LANCASTER COUNTY, NE.

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INST. NO 95

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# CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT, made this 22nd day of December, 1995, by and between  
LAS BRISAS LAND DEVELOPMENT A NEBRASKA CORPORTION  
 (herein collectively referred to as the "Borrower") and FIRSTIER BANK, N.A., LINCOLN REAL ESTATE LENDING DIVISION  
 with its offices and banking quarters at  
233 SOUTH 13 STREET LINCOLN, NE 68508 (herein the "Bank").

## RECITALS:

A. The Borrower has applied to the Bank for a loan in the aggregate principal amount of \$ 634,000.00 as evidenced by a Construction Loan Note dated December 22nd, 1995 in the principal amount of \$ 634,000.00, together with interest as provided therein (herein, together with all extensions, renewals, modifications and substitutions thereof or exchanges therefor, the "Note") to be repaid according to the terms set forth therein.

B. This loan is also governed by additional terms and conditions as outlined in the original commitment letter dated October 30th, 1995, which by this reference is incorporated into and becomes part of the loan documents.

C. The Note is secured by a Construction Security Agreement and Trust Deed (herein the "Trust Deed"), duly executed and acknowledged and dated the date of the Note upon the following described real estate:  
**SEE ATTACHED EXHIBIT "A"**

*JTB lol*

(herein the "Premises").

D. The Borrower expressly covenants to erect on the Premises SPECULATIVE  
 (herein the "Structure") in accordance with the plans, blueprints, specifications and general agreements filed in connection therewith and delivered to and approved by the Bank (herein the "Plans and Specifications").

IN CONSIDERATION of the mutual covenants and agreements contained herein, the Borrower (jointly and severally if more than one) and the Bank agree as follows:

1. The Trust Deed has been duly executed and acknowledged by all persons necessary and is and shall be a valid first lien on the Premises and Structure described above. All personal property and fixtures, including, without limitation, all chattels, materials, plumbing, furnaces, and all other property and fixtures and improvements now or hereafter attached to or placed in the Structure or to be used in connection therewith shall form part of the Premises to be covered by and subject to the lien of the Trust Deed given to the Bank to secure advances provided for herein.

2. The Bank may deduct from any payment to be made under this Agreement any amounts necessary for the payment of any expenses relating to the examination of the title to the Premises or the obtaining of title insurance with respect to the Premises or incurred in the procuring or making of the loan or in the payment of any encumbrance, tax, assessment or lien upon the Premises or any other amounts necessary for the payment of the costs of improvement as defined by existing law, or other charge, including a service and inspection fee of \$ 6,340.00 payable to the Bank for handling this Agreement, and apply such amounts in making the payments provided for herein. All sums so paid shall be deemed advances under this Agreement and secured by the Trust Deed.

3. The Bank agrees to make advances on the loan for the construction of the Structure in the following manner:  
**monthly upon presentation of bills to be paid and our physical inspection indicating the work and materials being paid for have been completed.**

Advances hereunder shall be paid only when, in the judgment of the Bank, all work usually done at the stage of construction when the advance is made payable, shall have been done in a good and workmanlike manner, and all material and fixtures usually furnished and installed, at that time, shall have been furnished and installed; provided, however, the Bank may advance any part, or the whole, of any installment before it becomes due, if the Bank believes it is advisable to do so, and all such advances or payments shall have been deemed to have been made pursuant to this Agreement.

4. The Borrower shall proceed with the construction of the Structure with all reasonable dispatch and due diligence and shall pay for any and all extras or modifications that the Borrower may make in the Structure, directly to the Bank to be disbursed together with the money loaned or advanced by the Bank in connection with the loan.

5. If the construction of the Structure is at any time discontinued, or at any time not carried on with reasonable dispatch in the judgment of the Bank, the Bank or any holder of the Note and Trust Deed may purchase materials and employ workmen to protect the Structure so that the same shall not suffer from depreciation, weather or otherwise, or to complete the Structure, so that it may be used for the purposes for which it is designed, under the Plans and Specifications. All sums so paid or expended shall be deemed to be advances to the Borrower and secured by the Trust Deed and may be applied, at the option of the Bank or any holder of the Note and Trust Deed, to any advances thereafter becoming due.

6. In no event shall the Bank be liable in any way to complete the Structure or to pay the cost of construction beyond the advances in the amounts deposited for such purposes or loaned by the Bank for the construction of the Structure.

7. In the event the Borrower shall fail to complete the Structure in accordance with the Plans and Specifications or shall neglect, fail or refuse to pay for the cost and expenses in connection therewith or shall fail in any other of the covenants set forth herein, then, at the option of the Bank or the holder of the Note and Trust Deed, the Bank may declare the Note and Trust Deed to be in default and the entire amount loaned by the Bank to the Borrower shall immediately become due and payable.

8. In the event of default by the Borrower, the then outstanding unpaid balance of the Note, together with accrued interest, shall, at the option of the Bank, become immediately due and payable without presentment or demand or notice of dishonor, all of which the Borrower hereby expressly waives. Any of the following events occurring with respect to Borrower shall constitute default under this Agreement and the Note: (1) the failure to make any payment of principal or interest due on the Note; (2) the failure to perform or observe any of the terms or conditions contained in this Agreement, the Note, the Trust Deed or any other agreement given to secure payment of the Note; (3) the Borrower's death or dissolution; (4) the sale (except in the ordinary course of business) of any part or all of the property with respect to which the Borrower has given the Bank a security interest; (5) the failure of the Borrower to pay its or their debts generally as they become due or the filing of any petition or action for relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any law or laws for the relief of, or relating to, debtors; (6) the failure to keep property given by the Borrower to the Bank as security insured or free from tax liability; (7) any or all of the Borrower's property is levied, attached or garnished; or (8) the Bank in good faith deems the prospect of payment of the Note or realization of any property given by the Borrower to the Bank as security is impaired. Any failure of the Bank to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any other time or from time to time thereafter.

9. This Agreement shall, upon execution, become effective and be binding upon and inure to the benefit of the Borrower and its or their respective heirs, personal representatives, successors and assigns and the Bank and its respective successors and assigns.

Dated in LINCOLN, NEBRASKA, the day and year first above written.

**LAS BRISAS LAND DEVELOPMENT COMPANY, A NEBRASKA CORPORATION**

*[Signature]*  
Borrower **STEVEN E. MIERS, PRESIDENT**

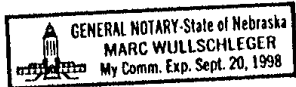
Borrower

By: *[Signature]*

Name: **MARC WULLSCHLEGER**  
Title: **ASST VICE PRES**

STATE OF NEBRASKA }  
COUNTY OF LANCASTER } ss.

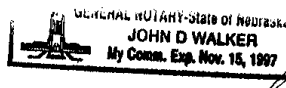
The foregoing instrument was acknowledged before me this 22nd day of December, 1995 by STEVEN E. MIERS, PRESIDENT OF LAS BRISAS LAND DEVELOPMENT COMPANY, A NEBRASKA CORPORATION



*[Signature]*  
Notary Public

STATE OF NEBRASKA }  
COUNTY OF LANCASTER } ss.

The foregoing instrument was acknowledged before me this 23rd day of December, 1995, by MARC WULLSCHLEGER, ASST VICE PRES of FIRSTIER BANK, N.A., LINCOLN REAL ESTATE LENDING DIVISION on behalf of said association.



*[Signature]*  
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 3, 4 and 5, Kimco Industrial Park, Lincoln, Lancaster County, Nebraska, together with that portion of vacated Kimco Place lying South of a straight line between the Northwest corner of Lot 4, and the most Northerly Northwest corner of Lot 3, Kimco Industrial Park in the City of Lincoln, Lancaster County, Nebraska, as vacated by Ordinance No. 14005, passed by the City Council on December 10, 1984, and excepting there from that portion of said Lot 3, more particularly described as follows: Beginning at the Northeast corner of said Lot 3; thence proceeding Westerly along the North line of said Lot 3, a distance of 24.0 feet; thence Southeasterly deflecting 94° left a distance of 154.83 feet to the intersection with the South line of said Lot 3; thence Northeasterly along the South line of said Lot 3, a distance of 16.0 feet to the Southeast corner of said Lot 3; thence Northerly along a line parallel to and 50.0 feet West of the East line of Section 13 a distance of 145.28 feet to the point of beginning.