



MTS

2006126400



NOV 03 2006 12:40 P 11

WHEN RECORDED MAIL TO:  
OMAHA STATE BANK  
12100 West Center Road  
Omaha, NE 68144

MTS  
55.50  
12-14-10  
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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/3/2006 12:40:42.76



2006126400

Filed: AS RECEIVED

**CONSTRUCTION DEED OF TRUST**

**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT  
WITHIN THE MEANING OF THE NEBRASKA CONSTRUCTION LIEN ACT**

THIS DEED OF TRUST is dated October 30, 2006, among AVG - CFM Coventry Estates, LLC, whose address is 1823 Harney Street, Omaha, NE 68102; A Nebraska Limited Liability Company ("Trustor"); OMAHA STATE BANK, whose address is 12100 West Center Road, Omaha, NE 68144 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Omaha State Bank, whose address is 12100 W. Center Rd., Omaha, NE 68144 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Trustor conveys to Trustee in trust, WITH POWER OF SALE, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Douglas County, State of Nebraska:

See Exhibit "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 204th & "Q" Streets, Omaha, NE.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Trustor to Lender, or any one or more of them, as well as all claims by Lender against Trustor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Trustor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**FUTURE ADVANCES.** In addition to the Note, this Deed of Trust secures all future advances made by Lender to Trustor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Deed of Trust secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Trustor, together with all interest thereon.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF TRUSTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND LENDER OF EVEN DATE HERewith. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

**CONSTRUCTION MORTGAGE.** This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Nebraska.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor

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## DEED OF TRUST (Continued)

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other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nebraska as to all Indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Beneficiary.** The word "Beneficiary" means OMAHA STATE BANK, and its successors and assigns.

**Borrower.** The word "Borrower" means AVG - CFM Coventry Estates, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Default.** The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

**Lender.** The word "Lender" means OMAHA STATE BANK, its successors and assigns.

**Note.** The word "Note" means the promissory note dated October 30, 2006, in the original principal amount of \$1,600,000.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Omaha State Bank, whose address is 12100 W. Center Rd., Omaha, NE 68144 and any substitute or successor trustees.

**Trustor.** The word "Trustor" means AVG - CFM Coventry Estates, LLC.

**TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.**

## EXHIBIT "A"

A Tract of land located in the North 1/2 of Section 12, Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: Commencing at the Northwest corner of the NE 1/4 of said Section 12; thence S02°43'50"E (assumed bearing) along the West line of said NE 1/4 of Section 12, a distance of 226.54 feet; thence N87°16'10"E, a distance of 52.42 feet to the point of beginning; thence S36°20'23"E, a distance of 96.30 feet; thence S47°27'25"E, a distance of 369.59 feet; thence S29°10'18"E, a distance of 424.01 feet; thence S25°24'24"E, a distance of 297.13 feet; thence S32°45'59"E, a distance of 71.80 feet; thence Southeasterly on a curve to the right with a radius of 335.00 feet, a distance of 11.58 feet, said curve having a long chord which bears S79°00'15"E, a distance of 11.58 feet; thence Easterly on a curve to the left with a radius of 242.75 feet, a distance of 98.05 feet, said curve having a long chord which bears S89°35'05"E, a distance of 97.38 feet; thence N78°50'39"E, a distance of 32.70 feet; thence N35°51'05"E, a distance of 7.31 feet; thence Southeasterly on a curve to the left with a radius of 535.55 feet, a distance of 432.74 feet, said curve having a long chord which bears S30°01'20"E, a distance of 421.07 feet; thence Southerly on a curve to the right with a radius of 265.00 feet, a distance of 281.70 feet, said curve having a long chord which bears S22°43'04"E, a distance of 268.62 feet; thence S07°44'06"W a distance of 23.80 feet; thence S50°46'50"W, a distance of 7.31 feet; thence Westerly on a curve to the left with a radius of 550.00 feet, a distance of 242.02 feet, said curve having a long chord which bears S80°57'33"W, a distance of 240.08 feet; thence S68°21'10"W, a distance of 66.80 feet; thence Southwesterly on a curve to the left with a radius of 632.50 feet, a distance of 455.06 feet, said curve having a long chord which bears S47°44'30"W, a distance of 445.31 feet; thence Southwesterly on a curve to the right with a radius of 80.00 feet, a distance of 62.69 feet, said curve having a long chord which bears S49°34'52"W, a distance of 61.10 feet; thence Southwesterly on a curve to the left with a radius of 97.50 feet, a distance of 39.43 feet, said curve having a long chord which bears S60°26'47"W, a distance of 39.16 feet; thence Southwesterly on a curve to the right with a radius of 45.00 feet, a distance of 61.22 feet, said curve having a long chord which bears S67°50'05"W, a distance of 56.61 feet; thence Northwesterly on a curve to the right with a radius of 175.00 feet, a distance of 101.86 feet, said curve having a long chord which bears N36°31'02"W, a distance of 100.43 feet; thence N19°50'34"W, a distance of 160.03 feet; thence S70°09'26"W, a distance of 50.00 feet; thence N19°50'34"W, a distance of 18.88 feet; thence S60°17'14"W, a distance of 181.03 feet; thence S47°54'55"W, a distance of 184.47 feet; thence S66°08'08"W, a distance of 129.89 feet; thence S84°21'22"W, a distance of 155.67 feet; thence N70°23'22"W, a distance of 151.54 feet; thence N84°24'59"W, a distance of 160.39 feet; thence N01°38'10"W, a distance of 157.83 feet; thence N01°38'10"W, a distance of 50.00 feet; thence S88°21'50"W, a distance of 29.70 feet; thence N45°52'20"W, a distance of 6.98 feet; thence Northwesterly on a curve to the right with a radius of 1031.66 feet, a distance of 434.56 feet, said curve having a long chord which bears N12°05'51"E, a distance of 431.36 feet; thence N24°09'53"E, a distance of 401.51 feet; thence N27°12'39"E, a distance of 49.05 feet; thence Northwesterly on a curve to the right with a radius of 80.00 feet, a distance of 13.17 feet, said curve having a long chord which bears N31°55'34"E, a distance of 13.15 feet; thence Northwesterly on a curve to the left with a radius of 132.00 feet, a distance of 57.49 feet, said curve having a long chord which bears N24°09'53"E, a distance of 57.03 feet; thence Northeasterly on a curve to the right with a radius of 80.00 feet, a distance of 13.17 feet, said curve having a long chord which bears N16°24'12"E, a distance of 13.15 feet; thence N21°07'07"E, a distance of 49.05 feet; thence N24°09'53"E, a distance of 657.98 feet; thence Northwesterly on a curve to the left with a radius of 1032.50 feet, a distance of 148.48 feet, said curve having a long chord which bears N20°02'42"E, a distance of 148.35 feet; thence Northwesterly on a curve to the right with a radius of 1231.33 feet, a distance of 49.99 feet, said curve having a long chord which bears N17°05'18"E, a distance of 49.48 feet; thence N18°15'05"E, a distance of 41.94 feet; thence Northwesterly on a curve to the left with a radius of 281.95 feet, a distance of 49.87 feet, said curve having a long chord which bears N13°11'04"E, a distance of 49.80 feet; thence Northwesterly on a curve to the left with a radius of 1042.50 feet, a distance of 22.68 feet, said curve having a long chord which bears N07°29'39"E, a distance of 22.68 feet to the point of beginning.