

ACKNOWLEDGMENT

The undersigned Trustor hereby acknowledges and understands that (a) the document to be executed is a trust deed ("Deed of Trust"), and not a mortgage and (b) the power of sale provided for in the Deed of Trust provides substantially different rights and obligations to the Trustor than a mortgage in the event of a default or breach of obligation, including but not limited to the Beneficiary's right to have the real property which is described in the Deed of Trust sold by the Trustee without any judicial proceeding or foreclosure. The undersigned further represents and agrees that this certification has been read and executed in connection with, but prior to, the undersigned's execution of the following Deed of Trust.

Dated this 21ST day of JULY, 19 93.

WEST BAY, INC.

BY:

THOMAS E. SMITH, PRESIDENT

THIS ACKNOWLEDGEMENT MUST BE SIGNED PRIOR TO EXECUTION OF THE DEED OF TRUST

DEED OF TRUST AND CONSTRUCTION SECURITY AGREEMENT

THIS DEED OF TRUST, made this 21ST day of JULY, 19 93, by and among

WEST BAY, INC.

whose mailing address is 11823 ARBOR STREET, Suite 220, Omaha, NE 68144

(herein "Trustor"); and FARMERS AND MERCHANTS BANK AND TRUST OF WATERTOWN

whose mailing address is 35 1ST AVENUE N E WATERTOWN, SD 57201-0877

(herein "Trustee") and FARMERS AND MERCHANTS BANK AND TRUST OF WATERTOWN

whose mailing address is 35 1ST AVENUE N E WATERTOWN, SD 57201-0877

(herein "Beneficiary").

FOR VALUABLE CONSIDERATION, Trustor irrevocably grants, 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 following described real property, located in DOUGLAS County, Nebraska:

SEE ATTACHED EXHIBIT "A"

CASH 1524 BY 4098 R 4-14-11 FB DL-10000
TYPE 100 PG 35-39 C/O COMP MA SCAN KL
FEE 25.00 OF 104 39

TOGETHER WITH, all rents, profits, royalties, income and other benefits derived from the real property; all leases or subleases covering the real property or any portion thereof, now or hereafter existing or entered into, and all right, title and interest of Trustor hereunder; all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the real property; all easements, rights-of-way, tenements, hereditaments and appurtenances thereof and thereto; all oil and gas rights and profits, water rights and water stock, 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 real property; and any and all buildings, fixtures, improvements, and appurtenances now or hereafter erected thereon or belonging thereto, (herein referred to as "Improvement" or "Improvements"). All of the foregoing real property and other property and interests conveyed to Trustee are herein collectively referred to as the "Property."

This Deed of Trust is given to secure the repayment of the obligations due under a certain promissory note dated JULY 21, 1993 in the original principal sum of ONE MILLION THREE HUNDRED THIRTEEN THOUSAND AND NO/100 ***** Dollars (\$ 1,313,000.00), with a final maturity date of JULY 19, 1996* (herein referred to as the "Note") and interest thereon according to the terms of Note with any and all extensions, renewals, modifications, or substitutions thereof and each and every debt, liability and obligation of every type and description, including guarantees or accommodations, which the Trustor may now or at any time hereafter, now or he obligated to the Beneficiary whether such debt, liability, or obligation now exists or hereafter arises, is direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several. The Note and all such debts, liabilities, and obligations are all collectively hereinafter referred to as "Obligations."

The total principal amount, exclusive of interest, of the Obligations, including any future debts, advances, liabilities or obligations, not including, however, any sums advanced for the protection and/or insurance of the Property or the Beneficiary's interest therein, shall not exceed the sum of ONE MILLION THREE HUNDRED THIRTEEN THOUSAND AND NO/100***** Dollars (\$ 1,313,000.00), PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL OR FUTURE LOANS OR ADVANCES IN ANY AMOUNTS.

*EXECUTED BY TRUSTOR AND THOMAS E. SMITH, INDIVIDUALLY, AND PATRICIA A. SMITH, INDIVIDUALLY

RECORDED
JUL 21 12 30 PM '93
REGISTERED
DOUGLAS COUNTY, NE

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

BOOK 4098 PAGE 36

1. **Payment of Obligations.** Trustor shall promptly pay the Obligations when due.
2. **Warranty of Title.** Trustor in lawfully seized and possessed of good and indefeasible title and estate to the Property hereby conveyed and has the right to grant and convey the Property; the Property is free and clear of all liens and encumbrances except _____

and Trustor will warrant and defend the title to the Property against all claims and demands.

3. **Maintenance and Compliance With Laws.** Trustor shall keep the Property in good repair and condition and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. No improvement now or hereafter erected upon the Property shall be altered, removed or demolished without the prior written consent of Beneficiary. Trustor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property and not commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance, regulation, covenant, condition or restriction. Trustor shall complete or restore promptly and in good workmanlike manner any building improvement or personal property constituting part of the Property which may be damaged or destroyed and pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof.

4. **Insurance.** Trustor, at its expense, shall keep the buildings and other improvements now existing or hereafter erected on the Property insured by insurance carriers satisfactory to Beneficiary against loss by fire, lightning, tornado, and other perils covered by a standard extended coverage endorsement, in an amount equal to at least one hundred percent of the full replacement value thereof; and insurance against such other hazards and in such amount as is customarily carried by owners and operators of similar properties and as Beneficiary may require for its protection. Trustor will comply with such other requirements as Beneficiary may from time to time request for the protection by insurance of the interest of the respective parties. All insurance policies maintained pursuant to this Deed of Trust shall name Trustor and Beneficiary as insureds, as their respective interests may appear, and provide that there shall be no cancellation or modification without written notice to the Beneficiary fifteen (15) days prior to its expiration date. In the event of cancellation of such insurance, Trustor and Beneficiary may procure such insurance and the cost thereof shall be added to the loan secured by this Deed of Trust and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal on the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest interest rate authorized by applicable law. Trustor shall deliver to Beneficiary the original policies of insurance and renewals thereof. Failure to furnish such insurance by Trustor, or renewals as required hereunder shall, at the option of Beneficiary, constitute a default. All uninsured premiums are hereby assigned to Trustor as additional security and a sale and conveyance of the Property by the Trustor shall operate to convey to the purchaser the Trustor's interest in and to all policies of insurance upon the Property.

5. **Taxes, Assessment and Charges.** Trustor shall pay all taxes, assessments and other charges, including, without limitation, fines and impositions attributable to the Property, and leasehold payments or ground rents, if any, before the same become delinquent. Trustor shall promptly furnish Beneficiary all notices of amounts due under this paragraph, and in the event Trustor shall make payment directly, Trustor shall promptly furnish to Beneficiary receipts evidencing such payments. Trustor shall pay all taxes and assessments levied upon this Deed of Trust or the indebtedness secured hereby, together with any other taxes or assessments which may be levied against the Trustor or Beneficiary or the legal holder of the Note.

6. **Additional Liens and Protection of Beneficiary's Security.** Trustor shall make all payments of interest and principal and payments of any other charges, fees and expenses required to be paid by the terms of any prior or subsequent deed of trust or mortgage before the date they are delinquent or in default, and promptly pay and discharge any and all other liens, claims or charges which may jeopardize the security granted herein. If a) Trustor fails to make any such payment or fails to perform any of the covenants and agreements contained in this Deed of Trust, or the Note referred to herein, or in any prior or subsequent mortgage or any prior or subsequent deed of trust; or b) if any action or proceeding is brought involving a decedent, notice of sale by Trustee, notice of default by Trustee, or mortgage foreclosure action; then Beneficiary, at Beneficiary's option and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, may make such appearance, disburse such sums and take such action as is necessary to protect Beneficiary's interest. Such action may include, but is not limited to, disbursement of reasonable attorney's fees, payment, purchase, contest or compromise of any encumbrance, charge or lien, entry upon the Property to make repairs, or declaration of default under this Deed of Trust and Note referred to herein, and sale or foreclosure thereunder. In the event that Trustor shall fail to procure insurance or to pay taxes, assessments, or any other charges or to make any payments to any existing prior or subsequent beneficiaries, Beneficiary may procure such insurance and make such payment, but shall not be obligated to do so. Any amounts disbursed by Beneficiary pursuant to this Paragraph 6 shall become additional indebtedness of Trustor secured by this Deed of Trust. Such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 6 shall require Beneficiary to incur any expense or take any action hereunder.

7. **Leased Premises; Assignments of Rents.** Within ten (10) days after demand, Trustor shall furnish to Beneficiary a schedule certified to be true, setting forth all leases of space in or of the Property then in effect, including, in each case, the name of the tenants and occupants, a description of the space occupied by such tenant and occupants, the rental payable for such space and such other information and documents with respect to such leases and tenancies as the Beneficiary may request.

Without the prior written consent of Beneficiary, Trustor shall not, directly or indirectly, with respect to any lease of space in the described premises, whether such lease is now or hereafter in existence: (a) accept or permit any prepayment, discount or advance rent payable thereunder; (b) cancel or terminate the same, or accept any cancellation, termination or surrender thereof, or permit any event to occur which would entitle the lessee thereunder to terminate or cancel the same; (c) amend or modify the same so as to reduce the term, thereof, the rental payable thereunder, or to change any renewal provisions therein contained; (d) waive any default thereunder or breach thereof; (e) give any consent, waiver or approval thereunder or take any other action in connection therewith, or with a lessee thereunder, which would have the effect of impairing the value of lessor's interest thereunder on the Property, or of impairing the position or interest of the Trustor or Beneficiary; or (f) sell, assign, pledge, mortgage or otherwise dispose of, or encumber, in any such lease or rents, issues or profits issuing or arising thereunder.

Beneficiary shall have the right, power and authority during the continuance of this Deed of Trust to collect the rents, issues and profits of the Property and of any personal property located thereon with or without taking possession of the property affected hereby, and Trustor hereby absolutely and unconditionally assigns all such rents, issues and profits to Beneficiary. Beneficiary, however, hereby consents to the Trustor's collection and retention of such rents, issues and profits as they accrue and become payable so long as Trustor is not, at such times, in default as defined herein. Upon any such default, Beneficiary may at any time, either in person, by agent, or by a receiver to be appointed by a court, without notice and without regard to the adequacy of any security for the indebtedness hereby secured: (a) enter upon and take possession of the Property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; (b) perform such acts of repair or protection as may be necessary or proper to preserve the value of the Property, and (c) lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate, or terminate or adjust the terms and conditions of existing leases. Unless Trustor and Beneficiary agree otherwise in writing, any application of rents, issues or profits to any indebtedness secured hereby shall not extend or postpone the due date of the installment payments as provided in said Note or change the amount of such installments. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof as described herein, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice. Trustor also assigns to Beneficiary, as further security for the performance of the Obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by a lessee of the Property, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Beneficiary. Delivery of written notice of Beneficiary's exercise of the rights granted herein, to any tenant occupying said premises shall be sufficient to require said tenant to pay said rent to the Beneficiary until further notice.

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

- (a) Trustor shall fail to pay the principal or interest of the Obligations when due;
- (b) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or
- (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 sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Trustor or of all or any part of the 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 or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

- (d) A writ of execution or attachment of any similar process shall be entered against Trustor which shall become a lien on the Property, or any portion thereof or interest therein and such execution, attachment or similar process of judgment is not released, bonded, satisfied, vacated or stayed within ninety (90) days after its entry or levy; or
- (e) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained herein or in any of the documents evidencing Obligations secured by this Deed of Trust; or
- (f) Trustor fails to perform any terms, conditions, covenants, or agreements which are part of other than this Deed of Trust any document or agreement which secures all or any part of the Obligations.

9. **Condemnation.** If title to any part of the Property shall be taken in condemnation proceedings, by right of eminent domain or similar action, or shall be sold under threat of condemnation, all awards, damages and proceeds are hereby assigned and shall be paid to Beneficiary who shall apply such awards, damages and proceeds to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. If Trustor receives any notice or other information regarding such actions or proceedings, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled, at its option, to commence, appear in and prosecute in its own name any such action or proceedings and shall be entitled to make any compromise or settlement in connection with any such action or proceedings.

10. **Acceleration; Remedies; Power of Sale.** Upon an event of default by Trustor, as defined in Paragraphs 8 and 22 herein, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of a written declaration of default. THE TRUSTEE SHALL HAVE THE POWER OF SALE OF THE PROPERTY and if Beneficiary desires the Property to be sold, it shall deposit with Trustee this Deed of Trust, the Note, and all other promissory notes and documents evidencing Obligations secured hereby, and shall deliver to Trustee a written notice of default and election to cause the Property to be sold, and the Trustee in turn shall prepare a similar Notice in the form required by law, which shall be duly filed for record by Trustee.

- (a) After the lapse of such time as may be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in said notice of sale, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one (1) day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser his Deed conveying the Property sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at the sale.
- (b) When Trustee sells pursuant to the powers herein, the Trustee shall apply the proceeds of the sale to payment of the costs and expenses of exercising the power of sale and of the sale, including but not limited to, the payment of the Trustee's fees actually incurred, and then to the items in subparagraph (c) in the order there stated.
- (c) After paying the items specified in subparagraph (b) if the sale is by Trustee, or after payment of proper court costs if the sale is pursuant to judicial foreclosure, the proceeds of sale shall be applied in the order stated below:
 - (i) Cost of any evidence of title procured in connection with such sale and of any revenue stamps;
 - (ii) Attorney fees and costs of collection;
 - (iii) All sums then secured by this Deed of Trust;
 - (iv) Junior trust deeds, mortgages, or other lienholders;
 - (v) The remainder, if any, to the person legally entitled thereto.

11. **Duties and Obligations of Trustee.** (a) The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee; (b) No provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its right or powers, if it shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; (c) Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it in good faith and reliance thereon; (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Deed of Trust; (e) Trustee shall not be responsible for the payment of any unpaid taxes on the Property due and owing at the time of the sale of all or any part of the Property pursuant to the procedures in Paragraph 10.

12. **Additional Security Instruments.** Trustor, at its expense, will execute and deliver to the Trustee, promptly upon demand, such security instruments as may be required by Trustee, in form and substance satisfactory to Trustee, covering any of the Property conveyed by this Deed of Trust, which security instruments shall be additional security for Trustor's faithful performance of all of the terms, covenants, and conditions of this Deed of Trust, the Note and any and all other documents evidencing the Obligations secured hereby, and any other security instruments executed in connection with this transaction. Such instruments shall be recorded or filed, and re-recorded and re-filed, at Trustor's expense.

13. **Successor Trustee.** Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment and without conveyance to the successor Trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument by Beneficiary, containing reference to this Deed of Trust and its place of record, which when recorded in the office of the Register of Deeds of the county or counties in which said Property is situated shall be conclusive proof of proper appointment of the successor trustee. The foregoing power of substitution and the procedure therefor shall not be exclusive of the power and procedure provided for by law for the substitution of another trustee or trustees in the place of the Trustee.

14. **Inspections.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon all or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of the Deed of Trust.

15. **Forbearance by Beneficiary or Trustee Not a Waiver.** Any forbearance by Beneficiary or Trustee 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 right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any default of Trustor under this Deed of Trust shall not be deemed to be a waiver of any other or similar defaults subsequently occurring.

16. **Trustor Not Released.** Extension of the time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor or Trustor's successor in interest. Beneficiary 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 demand made by the original Trustor and Trustor's successors in interest.

17. **Beneficiary's Right to Cure.** If there shall be a default under this Deed of Trust or under any prior mortgage or deed of trust, the Beneficiary may cure such default. The amounts advanced by, and other costs and expenses of the Beneficiary in curing such default, with interest (from the date of disbursement at the rate payable from time to time on outstanding principal on the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate authorized by applicable law) shall be added to the indebtedness secured by this Deed of Trust and may be collected hereunder at any time after the time of such advances or payments and shall be deemed to be secured thereby.

18. **Option to Foreclose as Mortgage.** Upon the occurrence of any default hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property.

19. **Trustor's Rights, Absent Default.** Until any default as defined herein, the Trustor, its successors and assigns, shall possess and enjoy the Property. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the property and shall surrender this Deed of Trust and the Note, and all other documents evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the property without warranty and without charge to the person legally entitled thereto. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay all costs of recording, if any.

20. **Beneficiary's Powers.** Without affecting or releasing the liability of the Trustor or any other person liable for the payment of any Obligations herein mentioned, and without affecting the lien 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, Beneficiary may, from time to time and without notice at the request of one or more Trustors (i) release any person so liable, (ii) extend or renew 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 Beneficiary's option any parcel or all of the Property, (v) take or release any other or additional security for any obligation herein mentioned, (vi) make compositions or other arrangements with debtors in relation thereto. All Trustors shall be jointly and severally obligated and bound by the actions of the Beneficiary or any one or more Trustor as stated in this paragraph.

21. Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or Obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any other agreement executed in connection herewith or by any laws now or hereafter in force, notwithstanding some or all of the such 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 such 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 provided under this Deed of Trust 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.

22. Transfer of the Property. If all or any part of the Property or interest therein is sold, transferred or otherwise conveyed by Trustor without Beneficiary's prior written consent (excluding (a) the creation of a purchase money security interest for household appliances, (b) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (c) the granting of any leasehold interest of three (3) years or less which does not contain an option to purchase), such action is an event of default under this Deed of Trust.

23. Warranty and Indemnification Regarding Hazardous Substances. Trustor warrants to Beneficiary and Trustee that the Property is free and clear of all hazardous substances and there are no claims or allegations of the existence of such hazardous substance in or on the Property, and there does not now exist any claim for expenses, costs, damages, or losses related to said hazardous substance or the cleanup of such substances. Trustor agrees to indemnify and hold Trustee and Beneficiary harmless from any and all claims, suits, losses, damages or expenses whatsoever, on account of injuries or death of any person, and all loss or destruction of, or damage to, the Property, and any and all economic losses, whether direct, indirect or consequential arising or growing out of, or in any manner connected with, the past, present or future presence of hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et. seq. as amended, or any other state or federal law now in existence or hereafter existing, relating to the Property. Trustor further agrees that it will appear and defend, at its own expense, in the name and on behalf of the Trustee or Beneficiary, all claims, actions or suits in whatever forum, in any matter arising or growing out of the alleged presence of any hazardous substance on the Property referred to herein and for which the Trustee or Beneficiary, or either of them is alleged to be liable. This indemnification shall survive payment in full of the Obligations.

24. Notices. Except for any notices, demands, requests or other communications required under applicable law to be given in another manner, whenever Beneficiary, Trustor or Trustee gives or serves any notice (including, without limitation, notice of default and notice of sale, demands, requests 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 is mailed by certified mail, postage prepaid, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other party hereto, as aforesaid, a notice of such change. Any notice hereunder shall be deemed to have been given to Trustor or Beneficiary, when given in the manner designated herein.

25. Request for Notice. Trustor and Beneficiary hereby request a copy of any notice of default and a copy of any notice of sale thereunder, whether such notice of default and notice of sale is given pursuant to the terms of this or any other deed of trust, be mailed to them at the address set forth in the first paragraph of this Deed of Trust for the Trustor and the Beneficiary.

26. Governing Law. This Deed of Trust shall be governed by the laws of the State of Nebraska.

27. Successors and Assigns. This Deed of Trust, and all terms, conditions and obligations herein, apply to and inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

28. Joint and Several Liability. All covenants and agreements of Trustor shall be joint and several.

29. Severability. In the event any one or more of the provisions contained in this Deed of Trust, or the Note or any other security instruments given in connection with this transaction shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or not fully secured by the lien of this Deed of Trust.

30. Number and Gender. Whenever used herein, the singular number shall include the plural, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date and year first above written.

WEST BAY, INC.
BY: [Signature]
THOMAS E. SMITH, PRESIDENT

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on _____, 19____ by _____

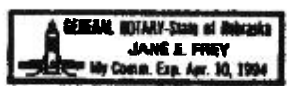
Notary Public
My commission expires _____

(TO BE USED IF TRUSTOR IS A CORPORATION)

State of NEBRASKA)
) ss.
County of DOUGLAS)

The foregoing instrument was acknowledged before me on JULY 21, 19 93 by THOMAS E. SMITH, PRESIDENT OF WEST BAY, INC.

a. NEBRASKA Corporation, on behalf of the Corporation.



[Signature]
Notary Public
My commission expires 4-30-94

A tract of land located in the NW 1/4 of Section 4, Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Beginning at the Southeast corner of said NW 1/4 of Section 4; thence S87°46'51"W (assumed bearing) along the South line of said NW 1/4 of Section 4, a distance of 1319.65 feet to the Southwest corner of the East 1/2 of said NW 1/4 of Section 4; thence N01°37'26"W along the West line of said East 1/2 of the NW 1/4 of Section 4, a distance of 2554.33 feet to a point on the North line of said NW 1/4 of Section 4; thence N87°36'58"E along said North line of said NW 1/4 of Section 4, a distance 1321.36 feet to a point on the East line of said NW 1/4 of Section 4; thence S01°35'12"E along said East line of the NW 1/4 of Section 4, a distance of 2558.14 feet to the point of beginning; EXCEPT the "F" Street right-of-way.

NE | NW
SE |