



MTG 2005158853



DEC 19 2005 10:11 P 23

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/19/2005 10:11:19.06



2005158853

**RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL TO:**

**Morrison Enterprises  
3303 W 12th  
Hastings, NE 68901 - 3446  
Attention: Anna Stehlik**

**DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

THIS DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING (this "Deed of Trust") dated this 18th day of November, 2005, by **1308 Jackson<sup>Del</sup> L.L.C.** a Nebraska Limited Liability Company ("Trustor"), whose address is 4524 Farnam Street, Omaha, NE 68132 to **Morrison Enterprises**, a general partnership, whose address is 3303 W 12<sup>th</sup> Hastings, NE 68901 - 3446 ("Beneficiary") and to Anna Stehlik, Attorney # 15621, 3303 W 12<sup>th</sup> P.O. Box 609, Hastings, NE 68901-3446 ("Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably warrants, grants, bargains, sells, 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 hereinafter set forth, all of the following-described estate, property, rights and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Mortgaged Property":

A. The "Property," being the real property located in the City of Omaha, County of Douglas County, State of Nebraska, described on Exhibit "A" attached hereto and by this reference made a part hereof, (the "Land"), together with any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to

Deed of Trust,  
Page 1

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THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

1. Payment of a maximum indebtedness in the amount of \$3,000,000 evidenced by that certain Promissory Note dated November 18, 2005, executed by Trustor in favor of Beneficiary in the principal amount of \$3,000,000, being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof, and the performance and discharge of each and every obligation of Trustor set forth in the Promissory Note;
2. Payment of all other indebtedness and the due, prompt and complete performance of all obligations and covenants of Trustor herein and under each of the "Loan Documents" (as defined below);
3. Payment of all of sums advanced by Beneficiary to protect the Mortgaged Property, and
4. Such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary, its successors or assigns, by Trustor, its successors or assigns, when evidenced by another promissory note or notes, which are by the terms thereof secured by this Deed of Trust.

The indebtedness and the obligations secured by this Deed of Trust which are described in (1) through (4) above may be referred to herein as the "Secured Obligations."

The indebtedness secured hereby is further evidenced and secured by two UCC Financing Statements (one state and one county), which, with this Deed of Trust, the Promissory Note and any amendments or supplements thereto or modifications thereof are hereinafter referred to collectively as the "Loan Documents:"

ARTICLE I

**REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF TRUSTOR**

Trustor hereby represents, warrants, covenants and agrees:

Section 1.01. **Payment of Secured Obligations.** Trustor hereby grants this Deed of Trust to secure the payment and performance when due of the Secured Obligations. The consideration received by Trustor to execute and deliver this Deed of Trust and the liens and security interests created herein is sufficient and will provide a direct economic benefit to Trustor.

Section 1.02. **Title of Trustor.** Trustor has, subject to Permitted Exceptions set forth in Exhibit "B" hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the encumbrance of this Deed of Trust and has full right to make this conveyance. With respect to any personal property acquired after the date hereof, Trustor shall be the sole owner of the personal property, free of

If to Trustor: 1308 Jackson DEV L.L.C.  
4524 Farnam Street  
Omaha, NE 68132  
Attn: Mike Brannan, Manager Member

With a copy to: Jerry Slusky  
Slusky Law, LLC  
17445 Arbor Street, Suite 300  
Omaha, NE 68130  
(402) 991-5777  
(402) 991-5117 (fax)

If to Trustee or Beneficiary: Morrison Enterprises  
3303 W 12<sup>th</sup>  
P.O. Box 609

Hastings, NE 68901-3346  
Attn: Kenneth Morrison, general partner  
With a copy to: Anna Stehlik  
Morrison Enterprises  
3303 W 12<sup>th</sup>  
Hastings, NE 68901-3346

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change at least ten (10) in advance of change of address.

Section 5.06. **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties only and are not a part of this Deed of Trust.

Section 5.07. **Invalidity of Certain Provisions; Conflicting Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on such obligations, 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 Secured Obligations which is not secured or fully secured by the lien of this Deed of Trust. To the extent any conflict exists between the terms of the Primary Lender, the terms of the security interest will govern.

Section 5.08. **Severability.** Should any term, provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. Should this instrument be or become ineffective as a Deed of Trust, then these presents shall be construed and enforced as a realty mortgage, with Trustor being the mortgagor and Beneficiary being the mortgagee.

Section 5.09. **Change in Ownership.** If the ownership of the Mortgaged Property or any part thereof or interest therein becomes vested in a person other than Trustor owning the

(c) Trustor's principal place of business is 1308 Jackson DEV L.L.C., «4524 Farnam Street, Omaha, NE, 68132.

(d) Trustor is duly qualified to do business in Nebraska. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the appropriate state tax authority and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed on the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

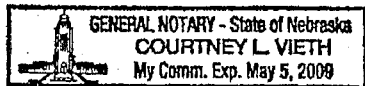
TRUSTOR:

1308 Jackson DEV L.L.C., a Nebraska Limited Liability Company

By: Mike D. Brannan  
Mike Brannan, MEMBER MANAGER

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me, a Notary Public, this 17<sup>th</sup> day of November, 2005, by Mike Brannan, Member Manager of 1308 Jackson DEV. L.L.C., a Nebraska Limited Liability Company on behalf of said Limited Liability Company. Mike Brannan personally appeared before me, a General Notary Public for the State of Nebraska, and is either personally known to me or was identified by me through satisfactory evidence.



Courtney L. Vieth  
Notary Public

**EXHIBIT "A"****Legal Description**

CITY LOTS LOT 5 BLOCK 167 66 X 132; CITY LOTS LOT 7 BLOCK 167 ALL LTS 6 & 7  
132 X 132 including all fixtures and equipment permanently attached to the Property.

Address: 1314 Jackson Street, 1308 Jackson Street, Omaha, Nebraska 68102



MTG 2007012387



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**WHEN RECORDED, PLEASE RETURN TO:**

Mortgage Loan Department  
Gateway Community Bank  
14320 Arbor Street  
Omaha, Nebraska 68144

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
2/1/2007 10:51:04.70



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**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR PURPOSES OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.**

**DEED OF TRUST, SECURITY AGREEMENT**

**AND**

**ASSIGNMENT OF RENTS**

**1308 JACKSON DEV, LLC  
a Nebraska limited liability company**

as Trustor,

and

**JANICE M. WOOLLEY, ESQ.**

as Trustee

and

**GATEWAY COMMUNITY BANK,  
a division of Northwest Federal Savings Bank**

as Beneficiary

Dated as of January 31<sup>st</sup>, 2007

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**DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of the 31<sup>st</sup> day of January, 2007 by and among 1308 JACKSON DEV, LLC, a Nebraska limited liability company ("Trustor"), whose address is 6032 Walnut Street, Omaha, Nebraska 68106; GATEWAY COMMUNITY BANK, a division of Northwest Federal Savings Bank ("Beneficiary"), whose address is 14320 Arbor Street, Omaha, Nebraska 68144; and JANICE M. WOOLLEY, ESQ. ("Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged:

I. Trustor hereby irrevocably warrants, grants, bargains, sells, 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 hereinafter set forth, all of the following-described estate, property and interest of Trustor now or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Real Property":

A. The "Property," being the real property located in Omaha, County of Douglas, State of Nebraska, described as follows:

Lots Five (5) Six (6) and Seven (7), Block one hundred sixty-seven (167), in the Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska

together with all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all estate, right, title and interest of Trustor in and to all leases or subleases covering the Property, or any portion thereof, now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and 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 and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; 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, open or proposed, adjoining the Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

B. Any and all buildings and improvements now or hereafter erected on the Property, including, but not limited to, the fixtures, attachments, appliances, equipment,

- (l) failure to provide Beneficiary with an ALTA as built survey showing all improvements, certified to Beneficiary and its title insurer by June 1, 2008;
- (m) failure to obtain approval of the City of Omaha for TIF financing in an amount not less than \$3,000,000.00 by May 1, 2007;
- (n) the occurrence of a default, or Event of Default, under any tax increment financing note between Trustor as maker and Beneficiary as lender ;
- (o) if any of the events in (d), (e) or (f) shall occur with respect to any guarantor of the Promissory Note.

**Section 5.02. Judicial Foreclosure or Trustee's Sale on Default**

(a) Upon the occurrence of one or more Events of Default or default by Trustor in the performance of any other agreement hereunder, or under any instrument or agreement secured hereby, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or Mortgaged Property may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

(b) In the event that the Trust Property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Trust Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Trust Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Trust Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

(c) In the event that the Promissory Note secured hereby does not expressly permit prepayment at any time, then upon the occurrence of any Event of Default under this Deed of Trust or any note secured hereby and following any acceleration of maturity

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

(i) Payment of indebtedness evidenced by that certain Promissory Note dated January \_\_\_\_, 2007 (the "Promissory Note"), executed by Trustor in favor of Beneficiary in the principal amount of \$11,000,000.00, bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof;

(ii) Payment of all other indebtedness and performance of all obligations and covenants of Trustor under each of the "Loan Documents," as hereinafter defined;

(iii) Payment of all of the principal of and interest on any future advances under the Loan Documents, and all sums advanced by Beneficiary to protect the Mortgaged Property, with interest thereon at the Default Rate provided by the Promissory Note from the date of advance by Beneficiary to the date of payment by Trustor; and

The indebtedness and the obligations secured by this Deed of Trust which are described in (i) through (iii) above may be referred to herein as the "Secured Obligations."

The indebtedness secured hereby is further evidenced and secured by the following, dated of even date herewith, which, with this Deed of Trust and the Promissory Note, are hereinafter referred to collectively as the "Loan Documents:"

- (a) an Assignment of Contractual Agreements affecting real estate;
- (b) an Assignment of Rents and Leases;
- (c) an Assignment of Purchase Agreements;
- (d) a Building Loan Agreement;
- (e) an Environmental Indemnity Agreement;
- (f) a UCC-1 Financing Statement;
- (g) Guaranty, signed by Ursula A. Brannan;
- (h) Guaranty of Completion and Payment signed by Michael D. Brannan;
- (i) Guaranty, signed by MDB Projects, Inc.; and
- (j) a Notice of Commencement covering certain real property located in the City of Omaha, Douglas County, Nebraska.

If to Trustor: 1308 Jackson DEV, LLC  
6032 Walnut Street  
Omaha, NE 68106

With a copy to: Jerry Slusky  
Slusky Law, L.L.C.  
17445 Arbor Street, Suite 300  
Omaha, Nebraska 68130-4611

If to Trustee: Janice M. Woolley, Esq.  
Marks Clare & Richards  
11605 Miracle Hills Drive, Suite 300  
Post Office Box 542005  
Omaha, Nebraska 68254-8005

If to Beneficiary: Gateway Community Bank  
14320 Arbor Street  
Omaha, Nebraska 68144  
Attention: Larry Marinovic

With a copy to: Janice M. Woolley, Esq.  
Marks Clare & Richards  
11605 Miracle Hills Drive, Suite 300  
Post Office Box 542005  
Omaha, Nebraska 68154 - 8005

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change.

**Section 6.06. Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**Section 6.07. Invalidity of Certain Provisions; Conflicting Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on such obligations, 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 Secured Obligations which is not secured or fully secured by the lien of this Deed of Trust. To the extent any conflict exists between the terms of the Commitment Letter and the terms of the other Loan Documents, the terms of the other Loan Documents will govern.

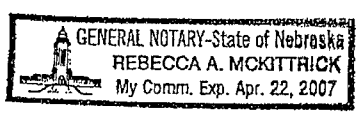
**Section 6.08. Subrogation.** To the extent that proceeds of the Promissory Note or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior

1308 JACKSON DEV, LLC,  
a Nebraska limited liability company

By: *Michael D. Brannan*  
Michael D. Brannan, Manager

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me, a Notary Public, this 31<sup>st</sup> day of January, by Michael D. Brannan, Manager of 1308 Jackson Dev, LLC, a Nebraska limited liability company, on behalf of said company.



*Rebecca A. McKittick*  
Notary Public

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**EXHIBIT "A"****Permitted Encumbrances**

Terms and conditions of Party Wall Agreement by and between William S. Hutcheson and Doris Hutcheson, husband and wife, and 1308 Jackson Partnership, a Nebraska partnership, dated April 16, 1991, filed May 13, 1991, in Book 963 at Page 137, Miscellaneous Records, Douglas County, Nebraska.

Terms and conditions of Agreement by and between J.P. Cooke Company and 1308 Jackson DEV, LLC, dated October 4, 2006, filed October 10, 2006 at Instrument No. 2006116099, Miscellaneous Records, Douglas County, Nebraska.