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*Glenn J. Downing*  
REGISTER OF DEEDS

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Verify R  
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After recording return to:  
Richard L. Anderson, Esq.  
Croker, Huck, Kasher, DeWitt, Anderson &  
Gonderinger, L.L.C.  
2120 S. 72<sup>nd</sup> Street, Suite 1250  
Omaha, Nebraska 68124

**DEED OF TRUST**

THIS DEED OF TRUST is made this 31<sup>st</sup> day of July, 2003, by and among **ROGERS DEVELOPMENT, INC.**, a Nebraska corporation (hereinafter called the "Trustor"), whose mailing address is 8250 Grover Street, Omaha, Nebraska 68124, **WELLS FARGO BANK NEBRASKA, NATIONAL ASSOCIATION** (hereinafter called the "Trustee"), whose mailing address is 1919 Douglas Street, Omaha, Nebraska 68102, and **WELLS FARGO BANK NEBRASKA, NATIONAL ASSOCIATION** (hereinafter called the "Beneficiary"), whose mailing address is 1919 Douglas Street, Omaha, Nebraska 68102.

WITNESSETH:

[ X ] IF THIS BOX IS CHECKED THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT UNDER THE NEBRASKA CONSTRUCTION LIEN ACT AND CREATES, GRANTS, AND CONSTITUTES A CONSTRUCTION SECURITY INTEREST IN THE PROPERTY DESCRIBED HEREINBELOW.

WHEREAS, Trustor is indebted to Beneficiary in the principal sum of Three Million One Hundred Thousand Dollars (\$3,100,000.00) which indebtedness is evidenced by Trustor's promissory note dated July 31, 2003 (hereinafter called the "Note"), and any renewals, extensions, and substitutions thereof, payable to the order of Beneficiary and having a maturity of August 1, 2008, as provided in a Loan Agreement between Trustor and Beneficiary dated July 31, 2003, as amended, modified, restated, or renewed hereafter (hereinafter called the "Loan Agreement").

NOW, THEREFORE, for the purpose of securing:

- (a) payment of the Note, together with interest thereon, late charges, prepayment penalties, any future advances, and all extensions, modifications, substitutions and renewals thereof;
- (b) payment of all other sums, fees or charges, together with interest thereon, advanced to protect the security of this Deed of Trust and the performance of the covenants and agreements of Trustor, whether or not set forth herein;
- (c) performance, discharge of and compliance with every term, covenant, obligation and agreement of Trustor contained herein or incorporated by reference or any other security instrument at any time given to secure the Note; and
- (d) the repayment of all other sums or future advances, with interest thereon, which may heretofore have been, or may hereafter, be advanced by Beneficiary to Trustor or Trustor's successor in interest or title;

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BTC

A

all of which is hereinafter collectively called the "Indebtedness," Trustor irrevocably grants, grants a security interest in, and transfers to Trustee, in trust, WITH POWER OF SALE, the following described property:

See Exhibit "A" attached hereto and incorporated herein by this reference;

together with (i) all buildings, structures, streets, utilities, additions, enlargements, modifications, repairs, replacements, and improvements now or hereafter located thereon, (ii) all equipment, machinery and fixtures (including, without limitation, all lighting, heating, ventilating, cooling, air conditioning, sprinkling and plumbing fixtures, water and power systems, engines, boilers, ranges, ovens, dishwashers, mirrors and mantels, carpeting, furnaces, oil burners, elevators and motors, refrigeration plants or units, communication systems, dynamos, transformers, electrical equipment, storm and screen windows, doors, awnings and shades) now or hereafter attached to, or built on, any building or improvement now or hereafter located hereon, (iii) all easements and rights of way appurtenant thereto, (iv) all leasehold estate, right, title and interest of Trustor in and to all leases, whether now or hereafter existing or entered into (including, without limitation, all cash and security deposits, advance rentals and deposits or payments of a similar nature), pertaining thereto, (v) all rents, issues, profits and income therefrom (subject to the right of Trustor to collect and apply such rents, issues, profits and income as they become due and payable so long as no event of default exists hereunder), (vi) all royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, (vii) all tenements, hereditaments, privileges and appurtenances belonging, used or enjoyed in connection therewith, (viii) all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance and condemnation awards), and (ix) all contracts for sale of any or all of the above described property, together with the proceeds thereof, all of which is hereinafter collectively called the "Trust Property."

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

1. Title. Trustor covenants, warrants and agrees with Beneficiary, its successors and assigns, that Trustor owns the Trust Property free from any prior lien or encumbrance except easements and exceptions described on Exhibit "B" attached hereto and incorporated herein by this reference (hereinafter called "Permitted Exceptions"), that this Deed of Trust is and will remain a valid and enforceable first lien on the Trust Property, that Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a first and paramount lien upon the Trust Property and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Trustor, at its expense, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to time. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be required by Beneficiary. Trustor hereby relinquishes all right of dower and homestead in and to the Trust Property.

2. Payment of Indebtedness. Trustor shall punctually pay the principal of and interest on the indebtedness secured hereby.

3. Construction of Improvements. Trustor shall complete in good and workmanlike manner any buildings, improvements or repairs relating thereto which may be begun on the Trust Property or contemplated by the loan evidenced by the Note secured hereby, to pay when due all costs and liabilities incurred therefore, and not to permit any construction lien against such Trust Property. In the event construction of buildings, improvements or repairs are contemplated, Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding; (a) to promptly commence any such work and to complete the proposed improvements promptly, (b) to complete the same in accordance with the plans and specifications as approved by Beneficiary, (c) to comply with all the terms of the Loan Agreement between Trustor and Beneficiary of on or about even date herewith, the terms of which are incorporated herein by reference and made a part hereof, (d) to allow Beneficiary to inspect the Trust Property at all times during

B

construction, and (e) to replace any work or materials unsatisfactory to Beneficiary within fifteen (15) days after written notice from Beneficiary of such fact.

4. Funds for Payment of Charges. Subject to applicable law and upon written request by Beneficiary, Trustor shall pay to Beneficiary on the first day of each month, or such other date each month as may be specified by Beneficiary, until the Indebtedness is paid in full, a sum (hereinafter called the "Funds") equal to 1/12th of the yearly taxes which may attain priority over this Deed of Trust and ground rents on the Trust Property, if any, all as reasonably estimated initially and from time to time by Beneficiary on the basis of reasonable estimates thereof. The Funds shall be held in an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency including Beneficiary. Beneficiary shall apply the Funds to pay said taxes and ground rents. Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds. Beneficiary shall give to Trustor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the Indebtedness secured by this Deed of Trust. If the amount of the Funds held by Beneficiary, together with the future monthly installments of Funds payable prior to the due dates of taxes shall exceed the amount required to pay said taxes as they fall due, such excess shall be, at Trustor's option, either promptly repaid to Trustor or credited to Trustor against future monthly installments of Funds. If the amount of the Funds held by Beneficiary shall not be sufficient to pay taxes or ground rents as they fall due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within thirty days from the date notice is mailed by Beneficiary to Trustor requesting payment thereof. Upon payment in full of all Indebtedness, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary. If the Trust Property is sold under the power of sale or the Trust Property is otherwise acquired by Beneficiary, Beneficiary shall apply, immediately prior to the sale of the Trust Property or its acquisition by Beneficiary, any Funds held by Beneficiary at the time of application as a credit against the Indebtedness. Until Beneficiary requests Trustor to make monthly payments under this paragraph 4, Trustor covenants and agrees to pay, before the same become delinquent, all taxes, assessments, insurance premiums, ground rents, and all other charges whatsoever levied upon or assessed, placed or made against the Trust Property except special assessments which will be paid as required in the Loan Agreement. Trustor further agrees, upon written request by Beneficiary, to promptly deliver to Beneficiary all receipts for the payment of such charges. Trustor likewise agrees to pay all taxes, assessments and other charges levied upon or assessed, placed or made against, or measured by, this Deed of Trust or the recordation hereof.

5. Application of Payments. All payments received by Beneficiary as to any debt, liability or obligation owed to Beneficiary by Trustor may be applied by Beneficiary to the payment of the Indebtedness or to any such other debt, liability or obligation, in any order or manner of application which Beneficiary, in its absolute discretion, deems appropriate.

6. Charges; Liens. Trustor will keep the Trust Property free from all liens and encumbrances which in any way may, in the judgment of Beneficiary, have priority over, or impair the security of, this Deed of Trust but Trustor need not discharge any such lien so long as Trustor shall agree, in writing, to pay the obligation secured by such lien in a manner acceptable to Beneficiary or shall in good faith contest such lien by appropriate legal proceedings effective to prevent the enforcement of the lien and the loss of any interest in or part of the Trust Property. Trustor shall maintain a reasonable cash reserve for any obligation contested in good faith, if requested by Beneficiary.

7. Hazard Insurance. Trustor shall keep any buildings and other improvements now existing or hereafter erected on the Trust Property insured by insurance carriers satisfactory to Beneficiary against loss by fire, hazards included in the term "extended coverage" and such other hazards, casualties and contingencies as may be required by Beneficiary, in such amounts and for such periods as may be required by Beneficiary, but in no event less than an eighty percent (80%) coinsurance basis. The policy of insurance shall be in form acceptable to Beneficiary, provide that the same may not be canceled or modified without fifteen (15) days prior written notice to Beneficiary, and shall have loss payable provisions in favor of and in form acceptable to Beneficiary. Upon written request of Beneficiary, all premiums on insurance policies shall be paid in the manner provided under paragraph 4 hereof; if not paid in such manner, Trustor shall make payment at least fifteen (15) days prior to the due date, directly to the insurance carrier. Trustor shall deliver a certificate of insurance to Beneficiary. Beneficiary shall have the right to hold the policies and

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renewals thereof and, upon request of Beneficiary, Trustor shall promptly furnish to Beneficiary all renewal notices and all paid premium receipts received by it. In no event shall Beneficiary or Trustee be held responsible for failure to pay insurance premiums or for any loss or damage arising out of a defect in any policy or arising out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Trustor to effect the insurance required hereunder. In the event of loss, Trustor shall give prompt notice by mail to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly or in proper form by Trustor. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to Beneficiary as additional security for the payment of the Indebtedness. In the event of Beneficiary's exercise of the power of sale contained herein, or in the event of foreclosure, all right, title and interest of Trustor in and to any insurance policy then in force shall pass to the purchaser at the trustee's sale or foreclosure sale. In case of any loss, the insurance proceeds may, at the option of Beneficiary, be applied by Beneficiary upon the Indebtedness, or any part thereof, and in such order and amount as Beneficiary may determine; or said insurance proceeds, at the option of Beneficiary, may either be used in replacing or restoring the Trust Property partially or totally destroyed to a condition satisfactory to Beneficiary or said insurance proceeds, or any portion thereof, may be released to Trustor. Trustor shall have no right to insurance proceeds while Trustor is in default. Unless Beneficiary and Trustor otherwise agree in writing, any such application of insurance proceeds shall not extend or postpone the due date of the Note, or any installments called for therein, or change the amount of such installments. If the Trust Property is acquired by Beneficiary pursuant to the exercise of the power of sale or other foreclosure, all right, title and interest of Trustor in and to any insurance proceeds payable as a result of damage to the Trust Property prior to the sale or acquisition shall pass to Beneficiary and shall be applied first to the costs and expenses, including attorney fees, incurred in collecting such proceeds, then in the manner and in the order provided herein.

8. Development and Maintenance of Trust Property. Trustor intends to develop a portion of the Trust Property as a mixed-use subdivision containing approximately four hundred eleven (411) residential lots, five (5) acres of commercial land, and twenty-five (25) acres of wetlands, which development will occur in four (4) or more separate phases. Trustor agrees to use its best efforts to complete the process of subdivision and development of the Trust Property as soon as practicable and to proceed with all due diligence to sell the individual lots as they are developed. Trustor will comply with all present and future ordinances, regulations and requirements of any governmental body which are applicable to the Trust Property and to the occupancy and use thereof.

9. Inspection. Beneficiary or its agents may, at all reasonable times, enter upon the Trust Property for the purpose of inspection. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it makes or fails to make any such inspection.

10. Protection of Security. If Trustor fails to perform any of the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which does or may adversely affect the Trust Property or the interest of Trustor or Beneficiary therein or the title of Trustor thereto, then Beneficiary, at its option, may perform such covenants and agreements, make such appearances, defend against and investigate such action or proceeding and take such other action as Beneficiary deems necessary to protect its interest including, but not limited to, disbursement of reasonable attorney fees and entry upon the Trust Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this paragraph 10, with interest thereon, shall constitute Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, 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 default rate, if any, set forth in the Note, or otherwise at the highest rate permitted by law. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Trustor irrevocably authorizes and empowers Beneficiary to enter upon the Trust Property as Trustor's agent and, in Trustor's name or otherwise to perform any and all covenants and agreements to be performed by Trustor as herein provided. Beneficiary shall, at its option, be subrogated to any encumbrance, lien, claim or demand and to all rights and securities for the payment thereof paid or discharged by Beneficiary under the provisions hereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust.

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11. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Trust Property, or any part thereof, or for conveyance in lieu of or in anticipation of condemnation, are hereby assigned to and shall be paid to Beneficiary to the extent of the unpaid balance of the Note. Trustor will file and prosecute, in good faith and with due diligence, its claim for any such award or payment and will cause the same to be collected and paid to Beneficiary, and, should it fail to do so, Trustor irrevocably authorizes and empowers Beneficiary, in the name of Trustor or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the proceeds. If the Trust Property is abandoned by Trustor, or, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within thirty (30) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds in the manner indicated herein. The proceeds of any award or claim may, after deducting all reasonable costs and expenses, including attorney fees, which may have been incurred by Beneficiary in the collection thereof, at the sole discretion of Beneficiary, be released to Trustor, applied to restoration of Trust Property, or applied to the payment of the Indebtedness. Unless Beneficiary and Trustor otherwise agree in writing, any such application of proceeds to Indebtedness shall not extend or postpone the due date of the Note or the payment of any installments called for thereunder.

12. Trustor Not Released. Extension of the time for payment or modification of any amortization of the Indebtedness granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor and Trustor's successors 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 Indebtedness by reason of any demand made by Trustor and Trustor's successors in interest.

13. Financial Covenants. Trustor shall comply with and shall cause any and all guarantors of the Indebtedness secured hereby to comply with all of the terms and conditions applicable to Trustor and Guarantors in the Loan Agreement of even date herewith.

14. Lot Sales Agreements. Within ten (10) days after execution thereof, Trustor shall furnish to Beneficiary the original of each lot sale agreement entered into together with such other information and documents with respect to such lot sales as Beneficiary may reasonably request as security for the payment of the Note. Each lot sale agreement shall be in the form of the lot sale agreement previously approved by Beneficiary without material variation therefrom.

15. Lot Releases. So long as no Event of Default has occurred, Beneficiary agrees to direct the Trustee to execute the lot releases for individual residential lots after filing of the final plat to create the subdivision for the development of the Trust Property, upon the payment to Trustee or Beneficiary of the sum provided for in the Loan Agreement between Trustor and Beneficiary of even date herewith.

16. Waiver of Statute of Limitations. Time is of the essence in all of Trustor's obligations and duties hereunder; and to the extent permitted by law, Trustor waives all present or future statutes of limitations with respect to any debt, demand or obligation secured hereby and any action or proceeding for the purpose of enforcing this Deed of Trust or any rights or remedies contained herein.

17. Assignment of Deposits. As additional security for the Indebtedness, Trustor hereby transfers and assigns to Beneficiary, all right, title and interest to any and all monies deposited by or on behalf of Trustor with any city, county, public body or agency, sanitary district, utility company, and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to the Trust Property. In addition and as additional security, Trustor hereby grants a security interest to Trustee in any and all monies deposited by purchase of lots after subdivision of the Trust Property and agrees upon demand by Trustee to deposit those amounts pending default in an account with Beneficiary or Trustee.

18. Corporation Existence. Trustor is a corporation; it will do all things necessary to preserve its corporate existence and all rights and privileges under the laws of the state of its incorporation.

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19. Forbearance by Beneficiary Not a Waiver. Any forbearance by Beneficiary 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 such right or remedy. The procurement of insurance or the payment of taxes or the discharge of liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the Indebtedness.

20. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

21. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary, Trustee, and Trustor. All covenants and agreements of Trustor shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

22. Flood Plain Insurance. To provide protection from serious financial loss, should a loss occur, Beneficiary requires the Trust Property to be continuously covered at all times with special flood insurance if, at any time, the Beneficiary notifies Trustor or the Trustor otherwise becomes aware that the Federal Emergency Management Agency (FEMA) has determined that such property is located in a flood hazard area. Special flood insurance must meet FEMA coverage requirements, and it must be in an amount at least equal to the lesser of the amount of the Note (cumulatively, if more than one Note) or the maximum insurance available under the National Flood Insurance Program. Trustor shall pay Beneficiary a fee for any flood hazard determination when such a determination is required by law.

Trustor shall maintain flood insurance, as described above, in force during the term of the loan and will furnish Beneficiary with a mortgagee endorsement upon origination and at every renewal period of the insurance. The insurance must be issued by a licensed insurance agent from an insurance company acceptable to Beneficiary. Trustor acknowledges that, even if its property is not located in a special flood hazard area at this time or even if its community does not currently participate in the federal flood insurance program, this may change. If Trustor's community later participates or FEMA determines that its property is in a special flood hazard area, Trustor agrees upon receipt of notice of such change to obtain flood insurance within forty-five (45) days of notice. Trustor authorizes Beneficiary to purchase flood insurance coverage for the Beneficiary only and to add the premium to the principal balance on which interest will be charged, if Trustor fails to obtain or maintain insurance.

23. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail, return receipt requested addressed to Trustor at its mailing address set forth above or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary or Trustee shall be given by certified mail, return receipt requested, to Beneficiary's and Trustee's mailing address stated herein or to such other address as Beneficiary or Trustee may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor, Beneficiary or Trustee when given in the manner designated herein. No notice shall be filed by Trustor and, if filed, be effective against Trustee and Beneficiary with respect to any aspect of this Deed of Trust unless such notice shall have been given first to the Trustee and the Beneficiary as provided in this paragraph.

24. Governing Law; Severability. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions and to this end the provisions of this Deed of Trust are declared to be severable.

25. Events of Default. Subject to applicable cure periods in the Loan Agreement which are longer than any cure period provided herein, each of the following occurrences shall constitute an event of default hereunder, (hereinafter called an "Event of Default"):

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a. Trustor shall fail to pay when due any principal, interest, or principal and interest on the Indebtedness;

b. Any warranty of title made by Trustor herein shall be untrue;

c. Trustor shall fail to observe or perform any of the covenants, agreements, or conditions in this Deed of Trust;

d. Any representation or warranty made by Trustor on any financial statements or reports submitted to Beneficiary by or on behalf of Trustor shall prove false or materially misleading;

e. Trustor shall fail to perform or observe any of the covenants, conditions or agreements contained in, or binding upon Trustor under or an Event of Default shall occur in the Loan Agreement;

f. A trustee, receiver or liquidator of the Trust Property or of Trustor shall be appointed, or any of the creditors of Trustor shall file a petition in bankruptcy against Trustor, or for the reorganization of Trustor pursuant to the Federal Bankruptcy Code, or any similar law, whether federal or state, and if such order or petition shall not be discharged or dismissed within ninety (90) days after the date on which such order or petition was filed;

g. Trustor shall file a petition pursuant to the Federal Bankruptcy Code or any similar law, federal or state, or if Trustor shall be adjudged a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall consent to the appointment of a receiver of all or any part of the Trust Property;

h. Final judgment for the payment of money shall be rendered against Trustor and Trustor shall not discharge the same, or cause it to be discharged, within thirty (30) days after the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based, or entered, and secure a stay of execution pending such appeal;

i. Except for individual lot sales in the ordinary course of business, as permitted under the terms of the Loan Agreement, Trustor shall sell or convey the Trust Property, or any part thereof, or any interest therein, or shall be divested of its title, or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first had and obtained;

j. Trustor shall permit or suffer any change in the capital ownership of Trustor that (1) results in any one person or entity from obtaining a controlling interest in Trustor who is not currently a shareholder of Trustor, or that (2) results in persons or entities not currently shareholders of Trustor obtaining on an aggregate basis a controlling interest in Trustor. Notwithstanding these limitations, intershareholder transfers or transfers of interests to any revocable or irrevocable trust for estate or tax planning purposes are expressly permitted; or

k. Trustor shall fail to properly maintain and preserve the Trust Property, including, but not limited to, the maintenance of the Trust Property free from all hazardous substances and hazardous waste as described in paragraph 34 below; or

l. Trustor shall fail to obtain or maintain flood insurance as required herein or as otherwise required.

26. Acceleration of Debt; Foreclosure. Upon the occurrence of any Event of Default, or any time thereafter, Beneficiary may, at its option, declare all the Indebtedness secured hereby immediately due

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and payable and the same shall bear interest at the default rate, if any, set forth in the Note, or otherwise at the highest rate permitted by law, and, irrespective of whether Beneficiary exercises said option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

a. Beneficiary may enter upon, take possession of, manage and operate the Trust Property or any part thereof; make repairs and alterations and do any acts which Beneficiary deems proper to protect the security thereof, and either with or without taking possession, in its own name, sue for or otherwise collect and receive 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 and Beneficiary's costs, upon the Indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and shall make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust Property, the collection of any rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default or notice of sale hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default, including the right to exercise the power of sale. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary may determine without regard to the adequacy of any security for the Indebtedness secured hereby.

b. Beneficiary shall, without regard to the adequacy of any security for the Indebtedness secured hereby, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of, protect, and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom.

c. Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.

d. Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give such notice of default and notice of sale as may be then required by law. Any cure period provided herein or in the Loan Agreement may run concurrently with any required notice periods under applicable law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the price bid, Trustee shall apply the proceeds in the following order: (i) to the cost and expenses of exercising the power of sale and of the sale, including but not limited to, trustee's fees of not more than Five Hundred Dollars (\$500.00) plus one-half of one percent of the gross sale price, and reasonable attorney fees, (ii) to the Indebtedness, and (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, attorney fees and court costs, shall be and constitute Indebtedness secured hereby.

27. Duties of Trustee. Trustor agrees that:

a. 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;



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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 rights or powers;

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 hereunder in good faith and reliance thereon; and

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 its discretion or rights or powers conferred upon it by this Deed of Trust.

28. Security Agreement and Fixture Filing. This Deed of Trust shall constitute a security agreement and fixture filing under the provisions of the Nebraska Uniform Commercial Code with respect to those fixtures described in the preambles hereof as constituting a part of the Trust Property, together with all other property of Trustor, either similar or dissimilar to the same, now or hereafter located at or on the Trust Property.

29. Future Advances. Upon request of Trustor, Beneficiary, at Beneficiary's option, prior to full reconveyance of the Trust Property by Trustee to Trustor, may make future advances to Trustor. Such future advances, with interest thereon, shall be secured by this Deed of Trust. At no time shall the principal amount of the Indebtedness secured by this Deed of Trust, not including sums advanced to protect the security, exceed the total sum of Four Million Dollars (\$4,000,000.00). Advances of disbursements made by Beneficiary to protect the security, under the terms hereof, while discretionary, shall not be deemed to be optional advances.

30. Reconveyance. Upon payment of all Indebtedness secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Trust Property and shall surrender this Deed of Trust and all notes evidencing Indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Trust Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

31. Substitute Trustee. Beneficiary, at its option, may from time to time remove Trustee and appoint a Successor Trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Trust Property, the Successor Trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.

32. Miscellaneous Rights of Beneficiary. Beneficiary may at any time and from time to time, without notice, consent to the making of any plat of the Trust Property or the creation of any easement hereon or any covenants restricting use or occupancy thereof or agree to alter or amend the terms of this Deed of Trust. Any personal property remaining upon the Trust Property after the Trust Property has been possessed or occupied by Beneficiary, its agent or any purchaser following Trustee's sale, foreclosure, or under any deed in lieu of Trustee's sale or foreclosure, shall be conclusively presumed to have been abandoned by Trustor.

33. Notice to Trustor. Trustor hereby requests that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Trustor at its mailing address set forth hereinabove.

34. Hazardous Waste. The Trustor represents, warrants and covenants to Beneficiary and Trustee as follows:

a. No hazardous substances or hazardous waste are presently stored or otherwise located on, in or under the Trust Property, and no part of the Trust Property, including the ground water located thereon, is presently contaminated by any such substances or waste and no investigations, inquiries, orders or other proceedings by or before any governmental agency are

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pending or threatened respecting hazardous substances or hazardous waste. For purposes of this instrument, the terms "hazardous, toxic, or dangerous waste, substance or material" within the meaning of the Federal Comprehensive Environmental Response, Compensation and Liability Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, as now or at anytime hereafter may be in effect.

b. Until the Indebtedness is paid in full, all hazardous substances or hazardous waste (as defined above), which may be used by any person for any purpose upon the Trust Property shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any governmental authority, and the Trust Property will not be used for the principal purpose of storing any such substances or waste and no such storage or use will otherwise be allowed on the Trust Property which will cause, or which will increase the likelihood of causing, the release of such substances or waste on, in or under the Trust Property.

c. Trustor shall promptly notify Beneficiary of any event that would render any representation or warranty contained in this paragraph 34 incorrect in any respect. In such event, Beneficiary may require that all violations of law with respect thereto be corrected and that all necessary governmental permits be obtained all at Trustor's sole expense.

d. Trustor does hereby indemnify and hold Beneficiary and Trustee, their directors, officers, employees, agents and any successor or successors to their interest in the Trust Property harmless from and against any and all losses, claims, damages, penalties, liabilities, response costs and expenses (including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel) (i) arising out of the inaccuracy, breach or incompleteness of any representation, warranty, or covenant made by Trustor in this paragraph 34 or in any document in writing delivered concurrently herewith, or (ii) arising out of any lawsuit brought or threatened, settlement reached, or governmental order relating to the presence, disposal, release, or threatened release of any hazardous substance or hazardous waste upon the Trust Property, or (iii) arising out of any violation of any applicable statute or regulation for the protection of the environment which occurs upon the Trust Property; provided that, to the extent that Beneficiary or Trustee is strictly liable under any statute or regulation, Trustor's obligations hereunder shall likewise be without regard to fault on the part of Trustor with respect to the violation of law which results in liability to Beneficiary or Trustee. The indemnification herein provided by Trustor shall continue in full force and effect indefinitely and shall survive the repayment of the Note, any reconveyance of the Trust Property by Trustee, and any foreclosure (whether judicially or pursuant to the power of sale granted herein) or deed in lieu of foreclosure of the Trust Property.

35. TRUSTOR PLEASE NOTE: TRUSTOR HEREBY WAIVES ANY RIGHT IT MAY HAVE UNDER THE CONSTITUTION OF THE STATE OF NEBRASKA OR OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO NOTICE, OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DEED OF TRUST TO TRUSTEE OR BENEFICIARY AND WAIVES ITS RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE HERewith ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. TRUSTOR'S WAIVERS UNDER THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY AND AFTER TRUSTOR HAS BEEN APPRAISED AND COUNSELED BY ITS ATTORNEYS AS TO THE NATURE THEREOF AND ITS POSSIBLE ALTERNATIVE RIGHTS.

36. Modifications. This Deed of Trust may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

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37. Successors in Interest. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, executors, administrators, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the holder and owner, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein.

38. Severability. If any term of this Deed of Trust or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Deed of Trust has been duly executed the day and year first above written.

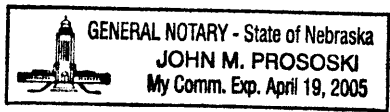
**ROGERS DEVELOPMENT, INC.,** a Nebraska corporation

By:   
Michael F. Rogers, President

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

On this 31<sup>st</sup> day of July, 2003, before me, a notary public in and for said county, personally came Michael F. Rogers, President of **ROGERS DEVELOPMENT, INC.**, known to me to be the identical person who signed the foregoing Deed of Trust and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal on this the day and year last above written.

(SEAL) 

  
Notary Public

X0220763.WPD

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EXHIBIT "A"

Parcel 1

That part of the Northeast Quarter of Section 33, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Beginning at the southeast corner of the said Northeast Quarter of Section 33; Thence South 87°20'36" West (bearings referenced to the Nebraska State Plane System, NAD83) for 2645.08 feet to the southwest corner of the said Northeast Quarter of Section 33; Thence North 02°56'50" West for 2590.08 feet along the west line of the said Northeast Quarter of Section 33 to the south right of way line of Nebraska Highway 370; Thence North 85°46'31" East for 55.01 feet along said south right of way line to the northwest corner of Tax Lot 7; Thence South 02°38'39" East for 99.93 feet to the southwest corner of Tax Lot 7; Thence North 87°25'07" East for 74.83 feet to the southeast corner of Tax Lot 7; Thence North 02°39'03" West for 102.06 feet to the northeast corner of Tax Lot 7 and the said south right of way line of Nebraska Highway 370; Thence North 85°49'54" East for 820.17 feet along said south right of way line; Thence South 89°38'46" East for 300.41 feet along said south right of way line; Thence North 87°05'51" East for 194.70 feet along said south right of way line; Thence North 85°39'08" East for 505.53 feet along said south right of way line; Thence North 89°27'44" East for 448.71 feet along said south right of way line; Thence North 89°45'16" East for 247.80 feet along said south right of way line to the east line of the said Northeast Quarter of Section 33; Thence South 02°56'03" East for 2588.21 feet to the Point of Beginning, SUBJECT TO THE existing 33 foot county road easement.

Parcel 2

Lots 7, 26, 42, 43, 45, 46, 48, 49, 50, 51, 59, 62, 63, 64, 70-77, inclusive, 79 - 90, inclusive, 93, 94, 96, 97, 99, 100, 101, 102, 103, 105 - 110, inclusive, 112 - 117, inclusive, 119 - 122, inclusive, 124 - 126, inclusive, 127A, 127B, 128A, 128B, 129A, 129B, 130A, 130B, 131A, 131B, 132A, 132B, 133A, 133B, 134 - 153, inclusive, Eagle View, a Subdivision in Sarpy County, Nebraska.

2003-42819L

EXHIBIT "B"

PERMITTED EXCEPTIONS

AS TO PARCEL 1

1. Easement to American Telephone and Telegraph Company, filed October 3, 1961, in Book 28 at Page 643 in the Office of the Register of Deeds, Sarpy County, Nebraska.
2. Easement between Bernice E. Barkley and Northern Natural Gas Company filed March 9, 1962, in Book 29 at Page 449, in the Office of the Register of Deeds, Sarpy County, Nebraska.
3. Easement between Bernice E. Barkley and Northern Natural Gas Company filed December 26, 1963, in Book 33 at Page 72, in the Office of the Register of Deeds, Sarpy County, Nebraska. Assignment of Easements to Utilicorp filed January 2, 1986 in Book 59 at Page 6, in the Office of the Register of Deeds, Sarpy County, Nebraska.
4. Easement between Arlisse J. and Keth Barkley, husband and wife, Sharon C. and Charles Barkley, husband and wife and Mary Ellen and Roy Myron Boyden, husband and wife and Papio-Missouri River Natural Resources District, filed December 11, 1996, as Instrument No. 1996-25004 in the Office of the Register of Deeds, Sarpy County, Nebraska.

AS TO PARCEL 2

1. Covenants and restrictions on use of the lots, filed by the developer of the subdivision of which the lots are a part, with respect to the subdivision as a whole.
2. Special assessments on the lots which are not delinquent as of the date hereof.
3. Easements noted in and filed with the plat of the subdivision of which the lots are a part.