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This Instrument Prepared by  
and When Recorded Mail To:

John S. Katelman  
Blackwell Sanders Peper Martin LLP  
1620 Dodge Street, Suite 2100  
Omaha, NE 68102

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
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DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND FIXTURE FILING

*THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT WITHIN THE PURVIEW OF THE NEBRASKA CONSTRUCTION LIEN ACT, AND SECURES AN OBLIGATION WHICH TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN AND IS A CONSTRUCTION SECURITY INTEREST.*

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING ("Deed of Trust") made this 2ND day of June, 2005, among RIVERFRONT PARTNERS LLC, a Nebraska limited liability company, with a mailing address c/o Kim McGuire, 1375 Deer Valley Drive, Suite 217, Deer Valley, Utah 84060, as Trustor; and FIRST NATIONAL BANK OF OMAHA, a national banking association, whose mailing address is 1620 Dodge Street, Stop 4300, Omaha, Nebraska 68197-4300, Attn: Mortgage Loan Department, as Trustee and Beneficiary.

WITNESSETH:

That Trustor irrevocably grants, conveys, mortgages, transfers and assigns to Trustee, in trust with power of sale, the real estate located in Douglas County, Nebraska, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Real Estate"), together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to:

- a. all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired;
- b. all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");

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c. all machinery, appliances, apparatus, equipment, inventory and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements thereof;

d. all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest;

e. all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder;

f. All contract rights under contracts to purchase condominium units to be constructed by Trustor as part of the Improvements on the Real Estate, together with all cash or securities deposited thereunder to secure performance by the contract purchasers of their obligations thereunder;

g. all building materials and supplies now or hereafter placed on the Real Estate or on or in the Improvements;

h. all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

i. all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor.

The property so conveyed hereunder is hereinafter referred to as the "Trust Property."

FOR THE PURPOSE OF SECURING THE FOLLOWING (the "Obligations"):

A. Payment of the principal sum of Nineteen Million Six Hundred Thousand and 00/100ths Dollars (\$19,600,000.00), together with interest thereon (collectively, the "Loan"), as evidenced by that certain Promissory Note dated of even date herewith, in the principal amount of Nineteen Million Six Hundred Thousand and 00/100ths Dollars (\$19,600,000.00), issued by Trustor to Beneficiary (hereinafter referred to as the "Promissory Note").

B. Payment of late charges and other sums due under the terms of the Promissory Note.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor incorporated by reference or contained herein, or contained in the Construction

Loan Agreement ("Loan Agreement") executed by Trustor and Beneficiary contemporaneously herewith, or in any of the following:

- (i) Assignment of Leases and Rents;
- (ii) Assignment of Purchase and Sale Agreements;
- (iii) Environmental Indemnity Agreement;
- (iv) Notice of Commencement;
- (v) Security Agreement;
- (vi) Uniform Commercial Code Financing Statement;
- (vii) Assignment of Contractual Agreements Affecting Real Estate;
- (viii) Assignment of Architectural Contract, Plans, and Specifications; or
- (ix) Conditional Assignment of Redevelopment Agreement

executed in connection with the Loan (all of which, including the Loan Agreement, are collectively hereinafter called the "Loan Documents").

D. Payment of future advances deemed necessary or desirable by Beneficiary to protect the Trust Property, or to defend this Deed of Trust and the priority lien created hereby.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. **Title.** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Trust Property in fee simple, subject only to the "Permitted Exceptions" shown on Exhibit "B" attached hereto and by this reference incorporated herein, and will forever warrant and defend the title thereto against the claims and demands of all persons whomsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Trust Property.

2. **Maintenance, Leases and Sale Contracts.**

a. To keep the Trust Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; not to remove, demolish or materially alter any building, or the character or use thereof, at any time thereon; not to drill or extract, nor to permit the drilling for or extraction of, oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon the Trust Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the Trust Property may be reasonably necessary to protect and preserve the same, the specific enumerations herein not excluding the general.

b. To faithfully perform all of the covenants of the lessor or landlord under any and all present and future leases affecting the Trust Property and as seller under any contracts to sell condominium units constituting any portion of the Trust Property, and neither do, nor permit to

be done, anything which may diminish or impair the value of any of such leases or contracts or of the Trust Property, or the rents provided for in such leases, the purchase price provided for in such contracts or the interest of the lessor, seller or of the Beneficiary therein or thereunder.

c. At Beneficiary's option, to notify all tenants or occupants under such leases of the assignment for security to Beneficiary of Trustor's interest in such leases and not to make payments in advance of the requirements of such leases.

d. At Beneficiary's option, to notify the purchasers under such condominium unit sale contracts of the assignment for security to Beneficiary of Trustor's interest in such contracts.

### 3. **Fire and Casualty Insurance.**

a. To keep the Trust Property insured against loss or damage by fire with extended coverage, vandalism and malicious mischief endorsement and loss as a result of loss of rental income in an amount equal to rent for one (1) year after the date of damage or destruction of the Improvements with respect to the leased portions thereof and business interruption insurance in an amount acceptable to Beneficiary, and against such other risks or hazards which, in the reasonable opinion of Beneficiary, should be insured against (including, during any period of construction, builder's risk completed value nonreporting form insurance), to the amount of the full insurable value thereof on a replacement cost basis with a company or companies and in such form and with such endorsements as may be approved or required by Beneficiary. Proceeds under all such insurance shall be payable to Trustor and Beneficiary, as their interests may appear, and all such insurance policies shall be endorsed with a standard, noncontributory mortgagee's clause in favor of Beneficiary and with a lender's loss payee endorsement as to loss of rental income. Trustor shall also carry public liability insurance in such form and amount and with such companies as Beneficiary may, from time to time, require, to include a provision to protect Beneficiary against any liability incident to the use of or resulting from any incident occurring in or about the Trust Property. Initially, such public liability insurance shall provide for commercial general liability coverage with limits of not less than \$3,000,000.00 combined single limit per occurrence for personal injury, death and property damage. However, such amount shall be increased from time to time as Beneficiary may hereafter require. Said policies or copies thereof, at Beneficiary's request, shall be delivered to, and remain in possession of, Beneficiary as further security for the faithful performance of the Obligations, which delivery shall constitute an assignment by Trustor to Beneficiary of all rights thereunder, including all return premiums. At least thirty (30) days before expiration, Trustor shall deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing paid premiums. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and may make payment of premiums thereon, which payment is reimbursable on demand. Neither Trustee nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the Loan. In no event, and whether or not an Event of Default (as hereinafter defined) has occurred hereunder, shall Beneficiary, by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor. Trustor shall give immediate written notice of any loss to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. Said policies shall require that thirty (30) days' prior written notice of cancellation or modification be given to Beneficiary.

b. In case of any loss, the amount collected under any policy of insurance on the Trust Property may, at the option of Beneficiary, be applied by Beneficiary to satisfaction of any Obligations and in such order and amount as Beneficiary may determine; or said amount, or any portion thereof may, at the option of Beneficiary, either be used in replacing or restoring the Trust Property to a condition satisfactory to Beneficiary, or said amount or any portion thereof may be released to Trustor. In any such event neither Trustee nor Beneficiary shall be obligated to see to the proper application thereof; nor shall the amount so released or used be deemed a payment on any Obligation. Such application, use, and/or release shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale or judicial foreclosure sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

c. Trustor further covenants and agrees to deposit with Beneficiary on the first day of each month, commencing on the first day of the calendar month after written notice from Lender to do so, in addition to the installment payments provided for under the Promissory Note, the insurance premiums required by subparagraph 3(a) above (the "Deposits"), as estimated by Beneficiary. The amount of the Deposits shall be adjusted by Beneficiary periodically so that sufficient sums will be available to pay all of the foregoing before interest or late payment charges accrue and, upon demand in writing by Beneficiary, Trustor shall promptly deposit with Beneficiary any amount in excess of said monthly payments which shall be required to pay such insurance premiums prior to delinquency. Trustor shall promptly forward to Beneficiary all bills for all insurance premiums in respect of the Trust Property. The Deposits shall not bear interest and shall be applied by Beneficiary to the payment of the insurance premiums prior to delinquency. In case of default in any of the terms of this Deed of Trust or any other Loan Document, the Deposits shall constitute additional security for all Obligations secured by this Deed of Trust and may be applied by Beneficiary as a credit upon any Obligation. Beneficiary may, from time to time, at its option, waive, and after such waiver reinstate, any and all provisions of this subparagraph requiring Deposits, by notice to Trustor in writing. While such waiver is in effect, Trustor shall pay all insurance premiums as otherwise herein provided and in so doing may utilize any existing Deposits.

4. **Taxes and Other Sums Due.** To pay, satisfy and discharge, at least ten (10) days before delinquency, any and all of the following sums:

- a. all general and special taxes and assessments and public charges affecting or levied against the Trust Property;
- b. all encumbrances, charges and liens, with interest, on the Trust Property, or any part thereof, which are, or appear to Beneficiary to be, prior to or superior hereto;
- c. all costs, fees and expenses of this trust, whether or not described herein;
- d. fees or charges for any statement regarding any Obligation in any amount demanded by Beneficiary, not to exceed the maximum amount allowed by law therefor at the time when such request is made;

e. such other reasonable charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor;

f. all payments and monetary obligations required of the owner of the Trust Property under any common area maintenance agreement, declaration of covenants, conditions and restrictions pertaining to the Trust Property, or any modification of the foregoing. Should Trustor fail to make any such payment, Beneficiary, without consenting to the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his or her reasonable fees.

Trustor further covenants and agrees to deposit with Beneficiary on the first day of each month, commencing on the first day of the calendar month after written notice from Lender to do so, in addition to the installment payments provided for under the Promissory Note and the Deposits required by subparagraph 3(c) above, one-twelfth (1/12) of the anticipated annual taxes, assessments and public charges, general and special, levied and assessed against the Trust Property and the indebtedness secured hereby (which sums shall constitute a part of the Deposits and be subject to the further terms and conditions of subparagraph 3(c), including the option of the Beneficiary to waive the same) as estimated by Beneficiary.

Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the Trust Property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment; provided, that such contest will not violate the terms of that certain Redevelopment Agreement between Borrower and the City of Omaha dated July 27, 2004, or the Notice of Redevelopment Agreement relating thereto and recorded in the office of the Douglas County Register of Deeds.

In the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, the holder of this Deed of Trust shall have the right to declare all Obligations due as of a date to be specified by not less than thirty (30) days' prior written notice to Trustor; provided, however, that such election shall be ineffective if Trustor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such tax and agrees to pay any such tax when thereafter levied or assessed against the Trust Property.

**5. Sums Advanced to Bear Interest.** To pay within ten (10) days following written demand, or other applicable notice requirements, any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be considered a portion of the Obligations and bear interest from the date advanced or paid at the same rate specified in the Promissory Note and shall be secured by this Deed of Trust.

**6. Assignment of Deposits.** That as further additional security, Trustor hereby transfers and assigns to Beneficiary during continuance of this Deed of Trust, all right, title and interest to any and all monies deposited (i) by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor, and (ii) as earnest money, a deposit or downpayment under a contract for sale of a condominium unit in the Project (as defined in the Loan Agreement).

7. **Events of Default.** Upon the occurrence of any one of the following (hereinafter an "Event of Default" or "default"), the payment of all principal, interest and any other sums due under the terms of the Promissory Note shall, at the option of Beneficiary, be accelerated and such principal, interest and other sums shall immediately be due and payable without notice or demand, and Beneficiary shall have the option to foreclose judicially or nonjudicially through power of sale any and all liens securing the payment thereof:

a. Default in the payment of principal of, or interest on, the Promissory Note when due or in the payment of any other sums secured hereby or due hereunder or under any other Loan Document when due; or

b. Failure by Trustor to punctually perform or observe any covenant or agreement contained in this Deed of Trust (other than the monetary obligations described in paragraph (a) above or those described elsewhere in this Section 7) and such failure shall not have been cured within fifteen (15) days after written notice from Beneficiary of such failure; provided, however that if such failure cannot by its nature be cured within said fifteen (15) day period, there will not be an Event of Default if Trustor has commenced to cure said failure to perform within said fifteen day period and if Trustor thereafter proceeds diligently to cure said failure and completes the cure within thirty (30) days after such notice from Lender; or

c. The occurrence of a default or an Event of Default under any Loan Document (other than this Deed of Trust); or

d. Any warranty, representation or financial statement made or furnished by Trustor or any member of Trustor to Beneficiary is discovered to have been false in any material respect when made or furnished; or

e. Trustor shall:

i. have an order for relief entered with respect to it under any law relating to bankruptcy, insolvency, reorganization or relief of debtors ("Bankruptcy Law");

ii. not pay, or admit in writing its inability to pay, its debts generally as they become due;

iii. make an assignment for the benefit of its creditors;

iv. apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any of its property;

v. institute any proceedings seeking an order for relief under any Bankruptcy Law, or a proceeding seeking to adjudicate it a bankrupt or insolvent or seeking a dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it, or its debts, under any Bankruptcy Law; or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it;

vi. take any action to authorize or effect any of the foregoing actions set forth in this paragraph (e); or

vii. fail to contest, in good faith, any appointment or proceeding described in paragraph (f) below; or

f. Without the application, approval or consent of Trustor, a receiver, custodian, trustee, examiner, liquidator or similar official shall be appointed for Trustor, or any of its property, or any proceeding described in subparagraph (e)(v) shall be instituted against Trustor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) consecutive days; or

g. Trustor shall fail, within thirty (30) days, to pay bond or otherwise discharge any judgment or order for the payment of money in excess of \$10,000.00, which is not stayed on appeal or otherwise appropriately contested in good faith; or

h. Any of the events in (e), (f) or (g) occurs with respect to any of the Guarantors of the Promissory Note; or

i. Should it be discovered after the execution and delivery of this Deed of Trust that there is a defect in the title to, or a lien or encumbrance of any nature on the Real Estate or other Trust Property described in the Loan Documents prior to the lien of the Beneficiary evidenced by the Loan Documents, and not disclosed in the policy of title insurance issued to the Beneficiary insuring the priority of this Deed of Trust covering the Real Estate, unless such defect is cured within thirty (30) days after written notice of such defect from Beneficiary to Trustor; or

j. Should Trustor be divested of title to the Real Estate, or any part thereof, or any interest therein, either voluntarily or involuntarily except as permitted by the Loan Documents; or

k. If title to the Trust Property be subjected to any lien or charge, whether superior or inferior to the lien of the Loan Documents, voluntarily or involuntarily, contractual or statutory, except as permitted by the Loan Documents, without the prior written consent of Beneficiary in each such instance first had and obtained, and if any such lien or charge is not released of record within thirty (30) days following written notice to Trustor.

8. **Compliance With Laws.** Trustor shall comply promptly and fully with all present and future laws, ordinances, rules and regulations and any governmental authority having jurisdiction of or over the Trust Property or any part thereof or any use of the Trust Property, including, without limitation, laws, ordinances, rules or regulations relating to asbestos, petroleum products, or hazardous or toxic wastes or materials.

IT IS MUTUALLY AGREED THAT:

9. **Litigation.** Trustor shall defend this Deed of Trust and the priority lien created hereby in any action or proceeding purporting to affect the Trust Property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Trust Property, and either Trustee or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding; and Trustee or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on written demand shall pay all actual and reasonable costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee



may appear by virtue of being made a party defendant or otherwise, and irrespective of whether the interest of Beneficiary or Trustee in the Trust Property is directly questioned by such action, including but not limited to any action for the condemnation or partition of the Trust Property.

**10. Sale of Premises.** In order to induce Beneficiary to make the Loan, Trustor covenants and agrees to and with Beneficiary that if the Trust Property or any part thereof or beneficial interest therein is sold, assigned, transferred, conveyed, encumbered, hypothecated, mortgaged or otherwise alienated by Trustor, whether voluntarily, involuntarily or by operation of law, in either or any case without the prior written consent of Beneficiary or as permitted by the Loan Agreement, Beneficiary, at its option, may declare the indebtedness evidenced by the Promissory Note and all other Obligations to be immediately due and payable, and Beneficiary may invoke any remedies following such acceleration as are permitted by this Deed of Trust and other Loan Documents or at law or in equity. Any:

- a. change in the legal or equitable title of the Real Estate, or in the beneficial ownership of the Real Estate, whether or not of record, and whether or not for consideration;
- b. change in the members of Trustor;
- c. pledge, assignment or encumbrance of any member's interest in Trustor; or
- d. change in the beneficial ownership of the then current owner of the Real Estate,

shall be deemed a transfer of an interest in the Trust Property for the purposes of this Section 10.

Consent by Beneficiary under this Section 10 to one such transaction or occurrence specified in this Section 10 shall not be deemed to be a waiver of the right to require such consent to any subsequent transaction or occurrence and it is understood and agreed that the provisions of this Section 10 shall be applicable to any persons or entities constituting Trustor at any time.

In the event ownership of the Premises, or any part thereof, becomes vested in a person or persons other than Trustor, in either case without the prior written approval of Beneficiary, Beneficiary may, without notice to Trustor, waive such Event of Default and deal with such successor or successors in interest with reference to this Deed of Trust and the Promissory Note in the same manner as with Trustor, without in any way releasing, discharging or otherwise affecting the liability of Trustor hereunder, or for any other Obligation, and no such sale of the Trust Property, forbearance on the part of Beneficiary, extension of the time for the payment of the indebtedness secured hereby or any change in the terms thereof or hereof consented to by Beneficiary shall in any way whatsoever operate to release, discharge, modify, change or affect the liability of Trustor hereunder, either in whole or in part. Any deed conveying the Real Estate, or any part thereof, shall provide that the grantee thereunder assume all of the grantor's obligations under this Deed of Trust, the Promissory Note and all other instruments or agreements now or hereafter evidencing or securing the repayment of the indebtedness secured hereby, except as otherwise permitted by the Loan Documents. In the event such deed shall not contain such assumption, Beneficiary shall have all rights reserved to it hereunder upon the occurrence of an Event of Default, or if Beneficiary shall not elect to exercise such rights and remedies, the grantee under such deed shall nevertheless be deemed to have assumed such obligations by acquiring the Real Estate or such portion thereof subject to this Deed of Trust.

**11. Casualty and Condemnation.** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgment, settlement or otherwise:

- a. for injury or damage to the Trust Property;

- b. in connection with any condemnation for public use or injury to the Trust Property or any part thereof;

are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary.

Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may require.

All amounts received by Beneficiary pursuant to this Deed of Trust, in connection with any condemnation for public use of, or injury to, the Trust Property, may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness secured hereby or other Obligation, and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of Beneficiary, be used in replacing or restoring the Trust Property to a condition satisfactory to Beneficiary, or be released to Trustor to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any Event of Default, or notice of default hereunder, or invalidate any act done pursuant to such notice.

To the extent the foregoing provisions of this Section 11 are inconsistent with or conflict with the approved (by Lender) and recorded Declarations (as defined in the Loan Agreement), the Declarations shall control.

12. **Consent, Partial Reconveyance and Subordination.** That at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and without affecting the personal liability of any person for payment or performance of the Obligations, or the lien of this Deed of Trust upon the remainder of the Trust Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of Beneficiary or Trustee with respect to the remainder of the Trust Property, Trustee may:

- a. reconvey any part of the Trust Property;
- b. consent to the making of any map or plat thereof; and/or
- c. join in any extension agreement or any agreement subordinating the lien or charge hereof.
- d. consent to the making and recording of the Declarations (as defined in the Loan Agreement).

Beneficiary agrees to cause the Trustee to reconvey condominium units of the Trust Property at the closing of the sale of a condominium unit provided the provisions of the Loan Agreement with respect to condominium unit sales and partial releases of this Deed of Trust have been complied with. Beneficiary also agrees to cause the Trustee to join in or consent to the making and recording of the Declarations (as defined in the Loan Agreement) and the reconveyances, releases, documents, agreements, modifications and amendments described in Section 3.2 of the Loan Agreement in connection with such Declarations.

13. **Right to Collect and Receive Rents and Profits.** Notwithstanding any other provisions hereof, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of the Trust Property as they become due and payable, but reserves the right to revoke such permission at any time by notice in writing to Trustor, mailed to Trustor at its last known address in the

event of the occurrence of an Event of Default, as defined in this Deed of Trust, if not cured within any applicable grace period. After any Event of Default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or non-collection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties or obligations of a mortgagee in possession. The entering upon and taking possession of the Trust Property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice.

**14. 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 covenant or agreement hereunder, or any covenant or agreement under any Loan Document or under any instrument or document now or hereafter executed by Trustor to further secure payment and performance of the Obligations, Beneficiary may declare all indebtedness secured hereby immediately due and payable and, at the option of Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property or may be sold in the manner provided in the Nebraska Trust Deeds Act, Neb. Rev. Stat. § 76-1001, *et seq.* under the power of sale conferred upon the Trustee hereunder.

b. If the Trust Property is sold pursuant to the power of sale conferred upon Trustee hereunder, 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 any Trust 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. 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, second, to the payment of any Obligations, 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. Trustor agrees, for itself and any and all persons or concerns claiming by, through or under Trustor, that if one or more of Trustor or any such persons or concerns shall hold possession of the Trust Property, or any part thereof, subsequent to the Trustee's or judicial sale hereunder, it, or the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at either such sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be

liable to such purchaser or purchasers for reasonable rental of the Real Estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

15. **Personal Property.** This Deed of Trust is also intended to create, and Trustor does hereby grant to Beneficiary, a security interest in any and all of the Trust Property which is personal property owned by Trustor and is now or hereafter located on or used in connection with the Trust Property including, but not limited to, all equipment, fixtures, furniture, appliances and articles of personal property owned by Trustor and now or hereafter located on, attached to or used in and about the Improvements which are necessary to the complete and comfortable use and occupancy of the Improvements for all purposes for which they are intended and such other goods and chattels and personal property owned by Trustor to be used or furnished in operating the Improvements, or the activities conducted therein, and all renewals or replacements thereof or substitutions therefor, whether or not the same shall be attached to the Improvements in any manner, and all building materials and equipment now or hereafter situated on, in or about the Real Estate or the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing items which are leased by Trustor. Trustor shall, from time to time, upon written request of Beneficiary, provide Beneficiary with a current inventory of all of the personal property in which the Beneficiary is granted a security interest hereunder, in such detail as Beneficiary may require.

16. **Security Agreement.** This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under the Nebraska Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officer, such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of the Trust Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold in one or more public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of the Real Estate by Trustee, as provided for in this Deed of Trust, and Beneficiary shall further have all rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an attorney, employee or other agent of Beneficiary or Trustee. Expenses of retaking, holding, preparing for sale, and selling such personal property shall be born by Trustor and shall include Beneficiary's and Trustee's fees and actual and reasonable legal expenses. Beneficiary shall have the right to enter upon the Real Estate and the Improvements or any other real property where any personal property which is the subject of the security interest granted herein is located, to take possession of, assemble and collect such personal property or to render it unusable, or Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at a place deemed reasonably convenient to Beneficiary. If notice is required by law, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of the Trust Property or of the time of or after which any private sale or other intended disposition is to be made, and, if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Deed of Trust upon giving the same notice with respect to the sale of the personal property as is required with respect to the trustee's sale under this Deed of Trust.

17. **Fixture Financing Statement.** This Deed of Trust is intended to be a financing statement within the purview of the Nebraska Uniform Commercial Code with respect to those items of the Trust Property that constitute fixtures on the Real Estate. The address of Trustor (Debtor) and Beneficiary (Secured Party) are set forth on the first page of this Deed of Trust. This Deed of Trust is to be filed for record in the office of the Register of Deeds of Douglas County, Nebraska, where the Real Estate is located. Trustor is the record owner of the Real Estate.

18. **Substitution of Trustee.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Register of Deeds of Douglas County, Nebraska, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

19. **No Waiver by Beneficiary.** No waiver by Beneficiary of any right under this Deed of Trust shall be effective unless in writing. Waiver by Beneficiary of any right granted to Beneficiary under this Deed of Trust or of any provision of this Deed of Trust as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment or performance of any Obligation after its due date, or by making any other payment or performing any other act on behalf of Trustor for which Trustor was obligated hereunder, but failed to make or perform, or by adding any payment made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right to require prompt payment when due of, or to require prompt performance of, any Obligation, or to declare a default for failure so to pay or perform.

20. **Time of the Essence.** Time is of the essence for all Trustor's obligations hereunder.

21. **Inspection of Trust Property.** Beneficiary, at any time during the continuation of this Deed of Trust, may enter upon and inspect the Trust Property after reasonable prior notice to Trustor.

22. **Remedies.** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Beneficiary holds any additional security for any Obligation, it may enforce the sale thereof at its option, either before, contemporaneously with, or after any sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness secured hereby, and the Beneficiary is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the enforceability of any Obligation, to apply toward the payment of any indebtedness of the Trustor to the Beneficiary any and all sums of money of Trustor which Beneficiary may have in its possession or under its control, including without limiting the generality of the foregoing, any savings account, deposit, investment certificate, escrow or trust funds.

23. **Illegality.** In the event that 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 provision, and to this end the provisions of this Deed of Trust are declared to be severable.

24. **General Provisions.**

a. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

b. The term "Beneficiary" shall mean the owner and holder (including a pledgee) of the Promissory Note, whether or not named as Beneficiary herein.

c. Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.

d. Captions and section headings used herein are for convenience only, are not a part of this Deed of Trust, and shall not be used in construing it.

e. The term "Trustor" shall mean the original Trustor hereunder and any subsequent owner of the Trust Property who acquires the same subject to this Deed of Trust with the consent of Beneficiary. If more than one person is now or hereafter named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person.

f. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

g. If the Trust Property shall be operated under a management agreement, such management agreement shall be additional security for the Loan and satisfactory in form and substance to Beneficiary, with a property management company acceptable to Beneficiary. The management agreement shall be terminable at Beneficiary's option upon the occurrence of an Event of Default.

**25. Trustee's Acceptance.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

**26. Address for Mailing Notices.** Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder shall be mailed to each person below at the address indicated:

If to Trustor, either to:	Riverfront Partners LLC or to c/o Kim R. McGuire Managing Member P.O. Box 505 Park City, Utah 84060	Riverfront Partners LLC c/o Kim R. McGuire Managing Member 1375 Deer Valley Drive, Suite 217 Deer Valley, Utah 84060
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If to Trustee or Beneficiary:	First National Bank of Omaha 1620 Dodge Street, Stop 4300 Omaha, Nebraska 68197-4300 Attn: Mortgage Loan Department
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**27. Applicable Law.** This Deed of Trust, the rights of Beneficiary hereunder and the Promissory Note shall be construed and enforced according to the laws of the State of Nebraska.

**28. Environmental Pollutants.**

**a. Definitions.** For purposes of this Deed of Trust:

"Environmental Pollutant" shall mean any pollutant, contaminant, solid waste or hazardous or toxic waste, substance or material defined as such pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901, *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, *et seq.*), or any other federal, state or local environmental law, statute, code, rule, regulation, order, decree or ordinance (collectively referred to as "Environmental Requirements").

"Environmental Notice" shall mean that certain Notice of Environmental Remediation Activity and Covenants Restricting Use dated May 13, 2004 and filed as instrument number 2004078291 on June 16, 2004 in the Douglas County Register of Deeds Office.

"RAP 2" shall mean that certain Remedial Action Plan identified as the "Remedial Action Plan Omaha Dock Property, City of Omaha Riverfront Redevelopment Project, August 2003, JHC Project No. 243-68" and/or the "RAPMA Project # 36-336-4919".

"Remediation Documentation" shall mean RAP 2 together with other remediation documentation submitted to and approved by the Nebraska Department of Environmental Quality pursuant to or in connection with RAP 2.

**b. Representations and Warranties.** Trustor represents and warrants that:

i. to the best of Trustor's knowledge after due inquiry, there is no asbestos or disposed Environmental Pollutant or petroleum product above, in, on, under or around the Trust Property except as is referred to, described in, or, the subject of the Environmental Notice, RAP 2 or the Remediation Documentation; and

ii. neither Trustor nor, to the best of Trustor's knowledge after due inquiry, any previous owner or operator of the Real Estate generated, used, had, managed or released any Environmental Pollutant above, in, on, under, from or around the Trust Property such that the Trust Property, any activity related to the Trust Property or the Environmental Pollutant was, or is, subject to regulation under Environmental Requirements, including without limitation, environmental permit requirements or environmental abatement, corrective, remedial or response action, except as is referred to, described in, or, the subject of the Environmental Notice, RAP 2 or the Remediation Documentation.

**c. Covenants of Trustor.** Trustor covenants that it shall not:

i. allow any asbestos or petroleum product to be above, in, on, under or around the Trust Property in violation of RAP 2, the Remediation Documentation or other Environmental Requirements; or

ii. generate, dispose, use, have, manage, release or allow the generation, use, presence, management, threatened release or release of any Environmental Pollutant above, in, on, under, from or around the Trust Property in violation of RAP 2, the Remediation Documentation or other Environmental Requirements

such that the Trust Property, any activity related to the Trust Property or any Environmental Pollutant becomes subject to additional regulation under Environmental Requirements, including without limitation, environmental permit requirements or environmental abatement, corrective, remedial or response action.

d. Indemnification. Trustor shall, and does hereby agree to, indemnify and hold Beneficiary harmless from any actions, claims, damages, liabilities, remedial action costs and other costs, including without limitation, court costs, attorneys' fees, punitive damages, civil penalties and criminal penalties, which may result in connection with any Environmental Pollutant which is related to the Trust Property or which is now or hereafter located above, in, on, under or around the Trust Property. Such indemnification shall survive the termination of this Deed of Trust, whether such termination occurs as a result of the exercise by Beneficiary of its rights and remedies hereunder or as a result of payment of the Promissory Note or otherwise.

e. Compliance with Environmental Requirements. If at any time it is determined that the Trust Property, any activity related to the Trust Property or an Environmental Pollutant above, in, on, under, from or around the Trust Property is subject to regulation under Environmental Requirements, including without limitation, environmental permit requirements or environmental abatement, corrective, remedial or response action, Trustor shall, at Trustor's sole expense, commence with due diligence, within thirty (30) days after receipt of notice thereof, or sooner if required by applicable law, and continue with due diligence to take all appropriate action to comply with all such regulations. If at any time it is determined that radon is present in an unacceptable level above, in, on, under, from or around the Trust Property, Trustor shall, at Trustor's sole expense, commence with due diligence, within thirty (30) days after receipt of notice thereof, or sooner if required by applicable law, and continue with due diligence to take all appropriate action to reduce the radon concentration to a level which complies with applicable regulations.

f. Notification to Beneficiary. Trustor, immediately upon obtaining knowledge thereof, shall notify Beneficiary in writing of:

- i. any proceeding or inquiry by any governmental authority with respect to the presence or release of any Environmental Pollutant above, in, on, under, from or around the Trust Property;
- ii. all claims made or threatened by any third party relating to any damage, loss or injury resulting from any Environmental Pollutant; and
- iii. the presence of radon above, in, on, under, from or around the Trust Property in concentration levels which exceed levels established by applicable regulations.

g. Rights of Beneficiary. Beneficiary shall have the right:

- i. at any time that Beneficiary reasonably suspects the presence of asbestos, petroleum product or radon, or of an Environmental Pollutant subject to regulation under any Environmental Requirement, in, on, under, from or around the Trust Property; or
- ii. upon and after any Event of Default hereunder,



to require Trustor, at the sole cost and expense of Trustor, to employ a qualified independent environmental auditor, acceptable to Beneficiary, to conduct an environmental audit of the Trust Property to determine whether there is any asbestos, petroleum product, radon or Environmental Pollutant above, in, on, under, from or around the Trust Property. Beneficiary shall instruct such auditor to conduct such audit in such a manner as to minimize interference with the operation of the Trust Property.

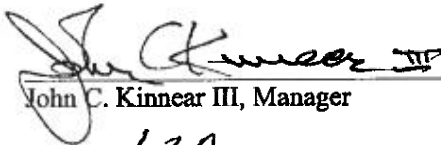
29. **Bank Account.** Until the Obligations of Trustor evidenced and secured by the Loan Documents are fully satisfied, Trustor shall maintain with Beneficiary Trustor's demand deposit accounts covering the Premises and all of Trustor's accounts established to hold deposits under contracts for sale of Project condominium units.

IN WITNESS WHEREOF, this Deed of Trust was executed on the date first set forth above.

TRUSTOR:

RIVERFRONT PARTNERS LLC, a Nebraska limited liability company, Maker

By:

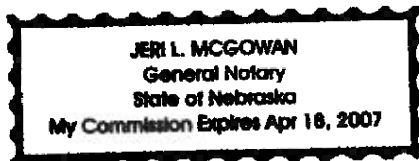
  
John C. Kinnear III, Manager

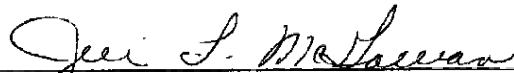
By:

  
Kim R. McGuire, Manager

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by John C. Kinnear III, Manager of Riverfront Partners LLC, a Nebraska limited liability company, on behalf of the limited liability company.

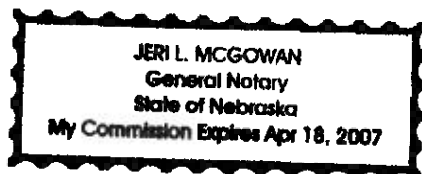


  
Notary Public  
My Commission Expires: 4/18/07

STATE OF Nebraska )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by Kim R. McGuire, Manager of Riverfront Partners LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Jeri L. McGowan  
Notary Public  
My Commission Expires: 4/18/07



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

Lot 1 and Outlots A and B, Riverfront Place, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

| OM-190772-2

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## EXHIBIT "B"

### Permitted Exceptions

1. Easement Agreement recorded April 11, 2002, in Book 1434 at Page 164 between the City of Omaha, Nebraska, and Riverfront Campus Developers, LLC.
2. Right-of-Way Easement recorded February 18, 2003, in Book 1494 at Page 191 granted to Omaha Public Power District.
3. Ordinance No. 35543 approved April 10, 2001 and Redevelopment Agreement pursuant to the Gallup University Riverfront Redevelopment Plan among the City of Omaha, Douglas County, and Riverfront Campus Developers, LLC dated April 19, 2001.
4. Ordinance No. 35894 and First Amendment to Redevelopment Agreement recorded April 14, 2003, in Book 1510 at Page 68.
5. Ordinance No. 36004 and Second Amendment to Redevelopment Agreement recorded July 31, 2003, as Instrument No. 2003-144737.
6. First Amendment to Redevelopment Covenants recorded February 22, 2005, as Instrument No. 2005-019185.
7. Easements shown on Plat and Dedication recorded April 10, 2002, in Book 2207 at Page 564.
8. Easements shown on Plat and Dedication filed June 24, 2003, as Instrument No. 2003-122302.
9. Notice of Environmental Remediation Activity and Covenant Restricting Use dated May 13, 2004, recorded June 16, 2004, as Instrument No. 2004-078291.
10. Easements shown on Plat and Dedication recorded September 21, 2004, as Instrument No. 2004-124790.
11. Notice of Redevelopment Agreement for Phase I dated May 26, 2005, and recorded at ~~Book~~ Page \_\_\_\_\_, in the Office of the Register of Deeds in Douglas County, Nebraska.  
*Inst. No. 2005062744 DEM*
12. Easement Agreement dated May 26, 2005, relating to a 20' drainage and storm sewer on Lots 1 and 5 and Outlots B and C executed by Developer and City.
13. Permanent Easement relating to Outlot A dated May 26, 2005, and recorded at ~~Book~~ \_\_\_\_\_, ~~Page~~ \_\_\_\_\_, in the Office of the Register of Deeds in Douglas County, Nebraska.  
*Inst. No. 2005062745 DEM*
14. Declaration of Redevelopment Covenants dated May 26, 2005, and recorded at ~~Book~~ \_\_\_\_\_, ~~Page~~ \_\_\_\_\_, in the Office of the Register of Deeds in Douglas County, Nebraska.  
*Inst. No. 2005062742*
15. Release and Termination of Reacquisition Rights dated May 26, 2005, executed by City.
16. Ordinance No. 36716 approved July 29, 2004 and Redevelopment Agreement pursuant to the Riverfront Place Redevelopment Plan, an Amendment to the Gallup University Redevelopment Plan, between the City of Omaha, Nebraska and Riverfront Partners LLC.



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Return to: Steven D. Johnson, Stinson Morrison Hecker LLP, 1299 Farnam Street, Omaha, NE 68102

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
6/1/2005 15:09:47.46



2005062744

### NOTICE OF REDEVELOPMENT AGREEMENT

**PUBLIC NOTICE IS HEREBY GIVEN** that a certain Redevelopment Agreement has been entered into by and between The City of Omaha, Nebraska, a municipal corporation (the "City"), and Riverfront Partners LLC, a Nebraska limited liability company (the "Developer") dated July 29, 2004 (the "Redevelopment Agreement"), which affects, in part, the following described property:

Lot 1 and Outlots A and B, Riverfront Place, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (the "Phase I Project Area").

Section 3.8 of the Redevelopment Agreement sets forth certain obligations of the parties with respect to tax increment financing bonds, which obligations are fully set forth in the Redevelopment Agreement; and

This Notice is being recorded to give notification of the obligations set forth in the Redevelopment Agreement only, and no further obligations are created or modified by this document.

All capitalized terms herein, unless specifically defined herein, shall have the meaning as set forth in the Redevelopment Agreement.

Section 3.8 of the Redevelopment Agreement provides as follows:

**"3.8 Certain Agreements Regarding TIF Financing.**

While the TIF Bonds issued with respect to specific portions of the Project Area are outstanding, the Developer, or its successors as provided below, shall as to the relevant portion of any of the Project Area which it owns and for which such bonds were issued:

- (i) pay all real estate taxes before delinquent;

*a misc*

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- (ii) not convey the Project Area, or any portion thereof, to any entity which would cause the Project Area to be exempt from full ad valorem real estate taxes on the improvements thereto, except for any public dedication of right of ways or easements contemplated in this Agreement;
- (iii) not lease the Project Area, or portion thereof, to any entity which would cause the improvements to be taxed separately and diminish the full ad valorem real estate tax value;
- (iv) maintain insurance for the full value of the structures on the Project Area. In the event of casualty, the Developer shall cause equivalent value of improvements to be reconstructed, or shall escrow funds sufficient to amortize the outstanding TIF Bonds; and,
- (v) not protest the real estate assessed value in the amount, or less than the amount of the valuation set out in Section 3.1 above as to the Project Area.

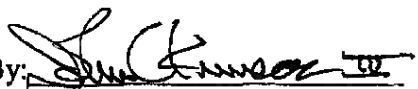
Each of the foregoing covenants set forth in this Section 3.8 shall run with the land and be binding on subsequent owners of the Project Area, or any part thereof as long as any TIF Bond is outstanding, and shall be referenced in a Notice of Redevelopment Agreement to be recorded in the office of the Register of Deeds of Douglas County, Nebraska after the final plat of the Project Area is recorded in the office of the Register of Deeds of Douglas County, Nebraska. Without the prior written consent of the City and the Developer, until the final plat of the Project Area is recorded, neither this Agreement nor any memorandum of this Agreement shall be recorded. The Developer, or its successors, as the case may be, agree to include the covenants set forth in this Section in any subsequent sale, assignment, sale-leaseback or other transfer of any portion of the Project Area and shall thereupon be released from any further responsibility with respect to such covenants insofar as they apply to the portion of the Project Area so transferred."

Subsection (v) above has been modified by the City and the Developer, whereby the parties have agreed to change the minimum stipulated aggregate value for real estate tax assessment purposes on the Phase I Project Area set out in Section 3.1 to \$25,800,000.

IN WITNESS WHEREOF, the undersigned has executed this Notice of Redevelopment Agreement as of the 26 day of May, 2005.

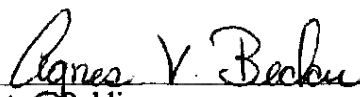
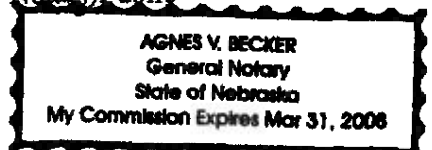
**RIVERFRONT PARTNERS LLC**

By:   
Kim R. McGuire, Manager

By:   
John C. Kinnear, III, Manager

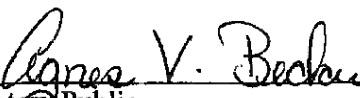
STATE OF NEBRASKA       )  
                                      )  
COUNTY OF DOUGLAS     )

Before me, a Notary Public qualified for said county, personally came Kim R. McGuire, as Manager on behalf of RIVERFRONT PARTNERS LLC, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on this on this 26 day of May, 2005.

  
Notary Public  


STATE OF NEBRASKA       )  
                                      )  
COUNTY OF DOUGLAS     )

Before me, a Notary Public qualified for said county, personally came John C. Kinnear, III, as Manager on behalf of RIVERFRONT PARTNERS LLC, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on this on this 26 day of May, 2005.

  
Notary Public  
