



MISC 2008007036



JAN 24 2008 11:53 P 6

Handwritten notes: "note", "FEE 30.50", "FB 01-16-2008", "BKP 26-16-16th", "DEL", "SCAN", "Fv", and a large handwritten "6" with a checkmark.

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
1/24/2008 11:53:14.07



2008007036

WHEN RECORDED MAIL TO:

Wells Fargo Bank National Association
Attn: Collateral Processing Dept III
700 2nd Avenue South, Suite 4000
Minneapolis, MN 55479

5267320271-26

MODIFICATION OF DEED OF TRUST

608438



200092215935000480

Return to:
UB Recordings, Inc.
2222 County Drive, Suite 201
St. Paul, MN 55112
4300055-01

THIS MODIFICATION OF DEED OF TRUST dated January 7, 2008, is made and executed between Military Road, LLC, a Nebraska Limited Liability Company, whose address is 3803 N 153rd Street, Suite 200, Omaha, NE 68116; ("Trustor") and Wells Fargo Bank, National Association, whose address is Omaha Downtown, 1919 Douglas Street, Omaha, NE 68102 ("Lender").

DEED OF TRUST. Lender and Trustor have entered into a Deed of Trust dated June 15, 2005 (the "Deed of Trust") which has been recorded in Douglas County, State of Nebraska, as follows:

Original Mortgage in the amount of \$2,500,000.00 filed on June 16, 2005 as Instrument No. 2005-069330 in the Office of the Register of Deeds, Douglas County, Nebraska.

REAL PROPERTY DESCRIPTION. The Deed of Trust covers the following described real property located in Douglas County, State of Nebraska:

See Exhibit "A"

The Real Property or its address is commonly known as Southwest Corner of 147th and State Streets, Omaha, NE 68136. The Real Property tax identification number is 2313-0006-01 and 2314-0008-01.

MODIFICATION. Lender and Trustor hereby modify the Deed of Trust as follows:

The Deed of Trust is hereby modified to reflect that it secures that certain Promissory Note dated January 7, 2008 (the "2008 Replacement Note") made by the Grantor in the face amount of \$1,006,362.00 payable to the Lender, and having a maturity date of November 25, 2008. The 2008 Replacement Note replaces, but shall not be deemed payment or satisfaction of, the "Note" as defined in the Deed of Trust. All references in the Deed of Trust to the "Note" shall henceforth be deemed to be references to the 2008 Replacement Note.

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable. If the Lender is required to give notice of the right to cancel under Truth in Lending in connection with any additional loans, extensions of credit and other liabilities or obligations of Grantor to Lender, then this Mortgage shall not secure additional loans or obligations unless and until such notice is given.

CONTINUING VALIDITY. Except as expressly modified above, the terms of the original Deed of Trust shall remain unchanged and in full force and effect. Consent by Lender to this Modification does not waive Lender's right to require strict performance of the Deed of Trust as changed above nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory note or other credit agreement secured by the Deed of Trust (the "Note"). It is the intention of Lender to retain as liable all parties to the Deed of Trust and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this

Handwritten checkmark and number: ✓ 10475376

2

**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 5267320271-26

Page 2

Modification. If any person who signed the original Deed of Trust does not sign this Modification, then all persons signing below acknowledge that this Modification is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Modification or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

ARBITRATION AGREEMENT, Arbitration - Binding Arbitration. Lender and each party to this agreement hereby agree, upon demand by any party, to submit any Dispute to binding arbitration in accordance with the terms of this Arbitration Program. A "Dispute" shall include any dispute, claim or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to this Agreement or any related agreement incorporating this Arbitration Program (the "Documents"), or any past, present, or future loans, transactions, contracts, agreements, relationships, incidents or injuries of any kind whatsoever relating to or involving Business Banking, Regional Banking, or any successor group or department of Lender. **DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY A JUDGE OR JURY.**

A. Governing Rules. Any arbitration proceeding will (i) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (ii) be conducted by the AAA (American Arbitration Association), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. *Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then at a location selected by the AAA in the state of the applicable substantive law primarily governing the Credit.* Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. Arbitration may be demanded at any time, and may be compelled by summary proceedings in Court. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief. The arbitrator shall award all costs and expenses of the arbitration proceeding. Nothing contained herein shall be deemed to be a waiver by any party that is a Bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

B. No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

C. Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Every arbitrator must be a practicing attorney or a retired member of the state or federal judiciary, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the Dispute. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all Disputes in accordance with the applicable substantive law and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the applicable State Rules of Civil Procedure, or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

D. Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than 20 days before the hearing date and within 180 days of the filing of the Dispute with the AAA. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

E. Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. The resolution of any Dispute shall be determined by a separate arbitration proceeding and such Dispute shall not be consolidated with other disputes or included in any class proceeding. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the Dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

F. State-Specific Provisions.

If California law governs the Dispute, the following provision is included. **Real Property Collateral; Judicial Reference:** Notwithstanding

3

**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 5267320271-26

Page 3

anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration. If any such Dispute is not submitted to arbitration, the Dispute shall, at the election of any party, be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

If Idaho law governs the Dispute, the following provision is included. **Real Property Collateral; Judicial Reference:** Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Idaho, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Montana law governs the Dispute, the following provision is included. **Real Property Collateral; Judicial Reference:** Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Montana, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Nevada law governs the Dispute, the following provision is included. **Real Property Collateral; Judicial Reference:** Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Nevada, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Utah law governs the Dispute, the following provision is included. **Real Property Collateral; Judicial Reference:** Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration. If any such Dispute is not submitted to arbitration, the Dispute shall, at the election of any party, be referred to a master in accordance with Utah Rule of Civil Procedure 53, and this general reference agreement is intended to be specifically enforceable. A master with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a master shall be entered in the court in which such proceeding was commenced in accordance with Utah Rule of Civil Procedure 53(e).

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION OF DEED OF TRUST AND TRUSTOR AGREES TO ITS TERMS. THIS MODIFICATION OF DEED OF TRUST IS DATED JANUARY 7, 2008.

TRUSTOR:

MILITARY ROAD, LLC

By: 
Eugene J. Graves Jr., Managing Member of Military Road, LLC

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

X 
Authorized Officer

MODIFICATION OF DEED OF TRUST
(Continued)

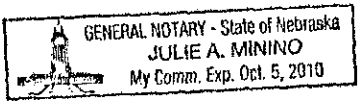
Loan No: 5267320271-26

Page 4

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Nebraska)
) SS
COUNTY OF Douglas)

On this 8 day of January, 20 08, before me, the undersigned Notary Public, personally appeared Eugene J. Graves Jr., Managing Member of Military Road, LLC, and known to me to be member or designated agent of the limited liability company that executed the Modification of Deed of Trust and acknowledged the Modification to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Modification and in fact executed the Modification on behalf of the limited liability company.

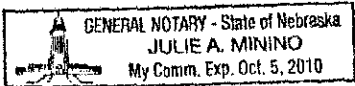


By Julie A. Minino
Notary Public in and for the State of Nebraska
Residing at 4552 2191 Ave
My commission expires 10-5-2010

LENDER ACKNOWLEDGMENT

STATE OF Nebraska)
) SS
COUNTY OF Douglas)

On this 8 day of January, 20 08, before me, the undersigned Notary Public, personally appeared Karen Wellness, and known to me to be the Deputy President Wells Fargo authorized agent for Wells Fargo Bank, National Association that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of Wells Fargo Bank, National Association, duly authorized by Wells Fargo Bank, National Association through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of Wells Fargo Bank, National Association.



By Julie A. Minino
Notary Public in and for the State of Nebraska
Residing at 4552 2191 Ave Omaha
My commission expires 10-5-2010

EXHIBIT A
LEGAL DESCRIPTION

The land referred to is situated in the State of Nebraska, County of Douglas and is described as follows:

Parcel 1:

26-16-11
NWNE

A TRACT OF LAND LOCATED IN THE NE1/4 OF SECTION 26, TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHWEST CORNER OF SAID NE1/4 OF SECTION 26; THENCE N87°13'25"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID NE1/4 OF SECTION 26, A DISTANCE OF 1333.31 FEET TO THE NORTHEAST CORNER OF THE NW1/4 OF SAID NE1/4 OF SECTION 26; THENCE S03°03'06"E ALONG THE EAST LINE OF SAID NW1/4 OF THE NE1/4 OF SECTION 26, A DISTANCE 1322.33 FEET; THENCE S87°13'26"W, A DISTANCE OF 1332.82 FEET TO A POINT ON THE WEST LINE OF SAID NE1/4 OF SECTION 26, SAID LINE ALSO BEING THE EAST LINE OF THE NW1/4 OF SAID SECTION 26; THENCE N03°04'22"W ALONG SAID WEST LINE OF THE NE1/4 OF SECTION 26, SAID LINE ALSO BEING SAID EAST LINE OF THE NW1/4 OF SECTION 26, A DISTANCE OF 855.58 FEET; THENCE N87°09'40"E, A DISTANCE OF 239.13 FEET; THENCE N03°07'41"W, A DISTANCE OF 391.49 FEET; THENCE S87°13'25"W, A DISTANCE OF 238.75 FEET TO A POINT ON SAID WEST LINE OF THE NE1/4 OF SECTION 26, SAID LINE ALSO BEING SAID EAST LINE OF THE NW1/4 OF SECTION 26; THENCE N03°04'22"W ALONG SAID WEST LINE OF THE NE1/4 OF SECTION 26, SAID LINE ALSO BEING SAID EAST LINE OF THE NW1/4 OF SECTION 26, A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 1,669,164 SQUARE FEET OR 38.319 ACRES, MORE OR LESS.

SAID TRACT OF LAND CONTAINS AN AREA OF 43,999 SQUARE FEET OR 1.010 ACRES, MORE OR LESS, OF 33.00 FOOT WIDE STATE STREET RIGHT-OF-WAY.

Parcel 2:

26-16-11
NE1/4

A TRACT OF LAND LOCATED IN THE NW1/4 OF SECTION 26, TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHEAST CORNER OF SAID NW1/4 OF SECTION 26; THENCE S03°04'22"E (ASSUMED BEARING) ALONG THE EAST LINE OF SAID NW1/4 OF SECTION 26, SAID LINE ALSO BEING THE WEST LINE OF THE NE1/4 OF SAID SECTION 26, A DISTANCE OF 75.00 FEET; THENCE S87°13'13"W, A DISTANCE OF 11.25 FEET; THENCE S03°07'41"E, A DISTANCE OF 391.76 FEET; THENCE N87°09'40"E, A DISTANCE OF 10.88 FEET TO A POINT ON SAID EAST LINE OF THE NW1/4 OF SECTION 26, SAID LINE ALSO BEING SAID WEST LINE OF THE NE1/4 OF SECTION 26; THENCE S03°04'22"E ALONG SAID EAST LINE OF THE NW1/4 OF SECTION 26, SAID LINE ALSO BEING SAID WEST LINE OF THE NE1/4 OF SECTION 26, A DISTANCE OF 856.03 FEET TO THE SOUTHWEST CORNER OF SAID NW1/4 OF THE NE1/4 OF SECTION 26, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THE NE1/4 OF SAID NW 1/4 OF SECTION 26; THENCE S87°12'52"W ALONG THE SOUTH LINE OF SAID NE1/4 OF THE NW1/4 OF SECTION 26, A DISTANCE OF 35.53 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MILITARY ROAD; THENCE NORTHWESTERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF MILITARY ROAD ON A CURVE TO THE RIGHT WITH A RADIUS OF 3885.80 FEET, A DISTANCE OF 97.58 FEET, SAID CURVE HAVING A CHORD WHICH BEARS N41°00'46"W, A

DISTANCE 97.58 FEET; THENCE N40°17'41"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF MILITARY ROAD, A DISTANCE OF 1571.00 FEET TO A POINT ON THE NORTH LINE OF SAID NW1/4 OF SECTION 26; THENCE N87°13'12"E ALONG SAID NORTH LINE OF THE NW1/4 OF SECTION 26, A DISTANCE OF 1045.84 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 711,849 SQUARE FEET OR 16.342 ACRES, MORE OR LESS.

SAID TRACT OF LAND CONTAINS AN AREA OF 34,098 SQUARE FEET OR 0.783 ACRES, MORE OR LESS, OF 33.00 FOOT WIDE STATE STREET RIGHT-OF-WAY.



U43420353-02NW06

MORTGAGE MODIFIC

US Recordings