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RICHARD N. TAKE...  
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Mortgage Loan Department  
First National Bank of Omaha  
Third Floor, First National Plaza  
11404 West Dodge Road  
Omaha, Nebraska 68154

DEL	SCAN
BKP	C/O
FEE	FB

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

FEE 125 FB 21.600000  
 BKP 4.15.11 C/O \_\_\_\_\_ COMP \_\_\_\_\_  
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**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.**

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of the 28<sup>th</sup> day of October, 1999, by and among The Thomsen Mile, L.L.C., a Nebraska limited liability company ("Trustor"), whose address is c/o West Maple, L.L.C., 2120 South 72 Street, Suite 800, Omaha, Nebraska 68124, ATTN: Mr. Jerry M. Slusky and c/o TM Associates, L.L.C., 1518 Mayfair Drive, Omaha, Nebraska 68144, ATTN: Mr. Trenton B. Magid; FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska ("Beneficiary"), whose address is 1620 Dodge Street, Omaha, Nebraska 68102; and FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska ("Trustee").

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

1. Trustor hereby irrevocably warrants, grants, bargains, sells, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the following-described estate, property and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Real Property":

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

See attached Exhibit "A",

together with all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all estate, right, title and interest of Trustor in and to all leases or subleases covering the Property, or any portion thereof, now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements,

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hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

B. Any and all buildings and improvements now or hereafter erected on the Property by Trustor, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (the "Improvements") (Trustor may remove or destroy any and all buildings and improvements located upon the Property as of the date of execution of this Deed of Trust);

II. Trustor further grants Beneficiary a security interest in the following (the "Personal Property"):

A. All right, title and interest of Trustor in and to all tangible personal property, if any, now owned or hereafter acquired by Trustor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to: all building materials stored on the Property, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, all kitchen equipment, and all other equipment of every kind), other than such property owned by tenants of Trustor;

B. All of Trustor's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Mortgaged Property (as defined below), whether now existing or entered into or obtained after the date hereof; all existing and future names under or by which the Mortgaged Property, or any portion thereof, may at any time be operated or known; all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the Mortgaged Property, or any portion thereof; and

C. All the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire in the Mortgaged Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and Trustor hereby authorizes, directs and empowers Beneficiary, at its option, on Trustor's behalf, or on behalf of the successors or assigns of Trustor, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

The foregoing items of Real Property and Personal Property are hereinafter called the "Mortgaged Property."

PROVIDED, HOWEVER, that these presents are upon the condition that, if the obligations secured hereby shall be paid when due, and if the Trustor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed by and observed by or on the part of the Trustor, then the Trustee, its successors and assigns, shall reconvey and release the Mortgaged Property.

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

(i) Payment of indebtedness evidenced by that certain Promissory Note dated October \_\_, 1999 (the "Promissory Note"), executed by Trustor in favor of Beneficiary in the principal amount of \$2,500,000.00, bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof;

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

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

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

The indebtedness secured hereby is further evidenced and secured by the following documents, executed by Trustor, dated of even date herewith, which, with this Deed of Trust, the Promissory Note and any amendments or supplements thereto or modifications thereof are hereinafter referred to collectively as the "Loan Documents:"

- (a) an Assignment of Rents and Leases;
- (b) an Environmental Indemnity Agreement;
- (c) a Notice of Commencement; and
- (d) a UCC Financing Statement,

and is guaranteed by an instrument entitled "Guaranty of Payment," executed by Jerry M. Slusky, Wayne D. Breyfogle Rollover IRA, Lawrence I. Batt, Robert L. Weinstein, Howard F. Hahn, George A. Fowler, Jr., Eugene Zweiback, Timothy S. Zweiback, James J. Giesler, Luke J. Coniglio, Bernard Magid, Thomas B. Fischer, Tucker B. Magid and Trenton B. Magid.

## ARTICLE I

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

Trustor hereby represents, warrants, covenants and agrees:

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

Section 1.02. **Title of Trustor.** Trustor has, subject to Permitted Encumbrances set forth in Exhibit "B" hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the encumbrance of this Deed of Trust and has full right to make this conveyance.

Section 1.03. **Construction of Improvements.** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any mechanic's or materialmen's lien against the Property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding:

10.2899

File No.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

PARCEL 1: A tract of land located in part of the South Half of the Southeast Quarter (S½ SE¼) of Section 4, and also part of the East Half of the Southwest Quarter (E½ SW¼) of said Section 4, all located in Township 15 North, Range 11 East of the 6<sup>th</sup> P.M., in Douglas County, Nebraska, more particularly described as follows:

Beginning at the Northeast corner of said Southwest Quarter of Section 4; thence South 00°15'16" West (assumed bearing), along the East line of said Southwest Quarter of Section 4, a distance of 1,321.80 feet, to the Northwest corner of said South Half of the Southeast Quarter of Section 4; thence North 89°50'50" East, along the North line of said South Half of the Southeast Quarter of Section 4, a distance of 1,920.98 feet; thence South 00°00'02" East, a distance of 365.00 feet; thence North 89°50'50" East, a distance of 675.00 feet, to a point on the West right-of-way line of 168<sup>th</sup> Street, thence South 00°00'02" East, along said West right-of-way line of 168<sup>th</sup> Street, a distance of 691.29 feet, thence South 17°05'18" West, along said West right-of-way line of 168<sup>th</sup> Street, a distance of 99.09 feet, to the point of intersection of the North right-of-way line of West Maple Road and said West right-of-way line of 168<sup>th</sup> Street; thence South 89°54'19" West, along said North right-of-way line of West Maple Road, a distance of 1,235.25 feet; thence South 85°35'48" West, along said North right-of-way line of West Maple Road, a distance of 601.02 feet; thence North 85°21'13" West, along said North right-of-way line of West Maple Road, a distance of 235.97 feet; thence North 85°21'15" West, along said North right-of-way line of West Maple Road, a distance of 216.30 feet; thence South 88°56'07" West, along said North right-of-way line of West Maple Road, a distance of 122.98 feet; thence North 00°10'26" West, along said North right-of-way line of West Maple Road, a distance of 80.02 feet; thence South 88°56'07" West, along said North right-of-way line of West Maple Road, a distance of 163.22 feet, to a point on said East line of the Southwest Quarter of Section 4; thence South 89°03'55" West, along said North right-of-way line of West Maple Road, a distance of 30.04 feet; thence South 01°03'46" East, along said North right-of-way line of West Maple Road, a distance of 77.75 feet; thence North 86°29'54" West, along said North right-of-way line of West Maple Road, a distance of 285.88 feet; thence South 85°15'57" West, along said North right-of-way line of West Maple Road, a distance of 1,015.73 feet, to a point on the West line of said East Half of the Southwest Quarter of Section 4; thence North 00°22'04" East, along said West line of the East Half of the Southwest Quarter of Section 4, a distance of 2,544.34 feet, to the Northwest corner of said East Half of the Southwest Quarter of Section 4; thence North 89°52'05" East, along the North line of said Southwest Quarter of Section 4, a distance of 1,320.54 feet, to the Point of Beginning;

EXCEPT that part thereof more particularly described as follows:

Commencing at the Northwest corner of said South Half of the Southeast Quarter of Section 4; thence North 89°50'50" East (assumed bearing), along the North line of said South Half of the Southeast Quarter of Section 4, a distance of 1,443.58 feet, to the Point of Beginning; thence continuing North 89°50'50" East, along said North line of the South Half of the Southeast Quarter of Section 4, a distance of 100.00 feet; thence Southwesterly, on a curve to the left with a radius of 330.00 feet, a distance of 101.60 feet, said curve having a long chord which bears South 81°01'39" West, a distance of 101.20 feet; thence North 00°09'10" West, a distance of 15.52 feet, to the Point of Beginning.

A portion of the above-described real property is in the process of being platted, and the legal description of such parcel, subsequent to the platting, will be Lots 1-20, inclusive, The Thomsen Mile, a subdivision in Douglas County, Nebraska.

**EXHIBIT "B"****Permitted Encumbrances**

1. Right-of-Way Easement granted to Nebraska Power Company by contract dated December 15, 1927 and recorded May 15, 1928, in Book 83 at Page 303 of the Miscellaneous Records of Douglas County, Nebraska.
2. Right-of-Way Easement granted to Northwestern Bell Telephone Company by instrument dated June 11, 1948 and recorded August 3, 1948, in Book 235 at Page 612 of the Miscellaneous Records of Douglas County, Nebraska.
3. Easement reserve in Warranty Deed dated February 25, 1979 and recorded February 26, 1979, in Book 1618 at Page 119 of the Deed Records of Douglas County, Nebraska, across a portion of subject property.
4. Controlled access restrictions and limitations as to ingress and egress contained in Return of Appraisers dated January 28, 1983 and recorded February 15, 1983, in Book 683 at Page 568 of the Miscellaneous Records of Douglas County, Nebraska.
5. Easement for drive purposes contained in Return of Appraisers dated January 28, 1983 and recorded February 15, 1983, in Book 683 at Page 568 of the Miscellaneous Records of Douglas County, Nebraska.
6. Limitations as to ingress and egress as contained in Warranty Deed dated September 21, 1982 and recorded December 10, 1982, in Book 1696 at Page 381 of the Deed Records of Douglas County, Nebraska.
7. Easement and Right-of-Way granted to Metropolitan Utilities District of Omaha by instrument dated July 22, 1998 and recorded July 31, 1998, in Book 1257 at Page 420 of the Miscellaneous Records of Douglas County, Nebraska, to lay, operate and maintain pipelines and appurtenances for the transportation of gas and water on, over, under and through a portion of subject property