

13

situated is intended to create a perfected security interest in such Collateral in favor of Lender and to constitute a "fixture filing" in accordance with the provisions of Nebraska Uniform Commercial Code. This Security Instrument shall be self-operative with respect to such Collateral, but Borrower agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Lender may request in order to impose the lien hereof more specifically upon any such Collateral and to pay the recording and/or filing fees associated therewith. For purpose of treating this Security Instrument as a security agreement and financing statement, Lender shall be deemed to be the Secured Party and Borrower shall be deemed to be the Debtor.

**28. RECONVEYANCE.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all Notes evidencing indebtedness secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

**29. SUBSTITUTE TRUSTEE.** Lender, at Lender's option, may from time to time by an instrument recorded in the Register of Deeds' office of the County in which this Security Instrument is recorded and otherwise in accordance with the provisions of Neb. Rev. Stat. § 76-1004 remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

**30. OTHER DOCUMENTS.** The undersigned has also executed other Loan Documents simultaneously with the Note and this Security Instrument. The parties hereto agree that said Loan Documents shall survive the closing, and that a default or violation of any one Loan Document is a default or violation of all Loan Documents, and that as a result thereof, the Security Instrument can be foreclosed or a default can be declared.

**31. ANNUAL OPERATING STATEMENTS.** Borrower shall furnish to Lender, Borrower certified annual operating statements for the Property by April 1 of each year during the term of the loan, which statements shall be prepared in accordance with generally accepted accounting principles consistently applied. Said statements shall include a rent roll, gross income (itemized as to source), operating expenses (itemized) and net income before federal income taxes.

Borrower shall furnish to Lender, annual financial statements for the Borrower by April 1 of each year during the loan term. Said statements shall include a balance sheet, profit and loss statement, and any supplemental schedules. If Borrower fails to furnish said statements, Lender shall, at its option, have the right to audit Borrower's books and records. Upon request, Borrower will also provide copies of its federal income tax returns to Lender.

Guarantors, Loren W. Gunderson and Eugene P. Gallagher, shall submit personal financial statements dated and signed certifying to the accuracy of the statement by April 1 of each year during the term of the loan. Said personal financial statements must be current (not more than 60 days old) when submitted to Lender. Upon request, Guarantors will also provide copies of their respective federal income tax returns to Lender.

**32. MONTHLY INSTALLMENT ADJUSTMENTS.** Borrower and Lender acknowledge that the Interest and Installments of Principal and Interest of the Note secured hereby are subject to periodic adjustment pursuant to the provisions of said Note.

**33. SECONDARY FINANCING.** Borrower hereby agrees that there shall be no additional secondary financing on the Property without the prior written consent of Lender.

**34. CONSTRUCTION LOAN PROVISIONS.** Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Security Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Security Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Security Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefore.

From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may invoke all rights and remedies provided in this Security Instrument, including the acceleration of all sums secured by this Security Instrument, or (iii) may exercise any other right or remedy available to Lender under the Loan Documents or such remedies as may be provided at law or in equity. All such rights and remedies shall be cumulative.

**35. REQUEST FOR NOTICE.** Borrower and Lender hereby request that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Borrower and Lender at their respective mailing addresses set forth above.

**36. CROSS DEFAULT PROVISION.** Borrower executed a Deed of Trust and Security Agreement in favor of TierOne Bank f/k/a First Federal Lincoln Bank, which Deed of Trust secures payment of the indebtedness evidenced by a Note Secured by Deed of Trust both dated October 29, 2001, which Deed of Trust was recorded on November 7, 2001 in Book 6783, Pages 572-586, in the amount of \$1,025,000.00 which is identified as Loan No. 01-10168430 on the Property. Borrower hereby agrees that a default under the terms and conditions of this Security Instrument or the Deed of Trust dated October 29, 2001 referenced herein, or any of the other security instruments securing either of the Notes shall constitute a default under both Notes this Security Instrument and the Deed of Trust dated October 29, 2001, and upon such occurrence Lender may exercise, at its sole option, any of the rights or remedies contained in this Security Instrument or the Deed of Trust dated October 29, 2001.

**37. SPECIAL PROVISION.** It is hereby understood and agreed between the Borrower, Trustee, and Lender that the Borrower is proposing to develop the Property in two (2) phases. Phase I shall be developed with 92 apartment units and a clubhouse, and Phase II shall be developed with 140 apartment units. Borrower shall furnish to Lender for approval, the subdivision/administrative lot split of the Property from Lot 2, Grayhawk Replat 1, as surveyed, platted and recorded in Douglas County, Nebraska, duly authorized by all required governmental authorities, and the easements and covenants regarding the use of driveways, roads, parking areas and other common areas which relate to or affect the Property. Borrower shall complete such subdivision/administrative lot split process and obtain final approval from all required governmental authorities within one hundred twenty (120) days from the date of this Security Instrument.

Upon Lender's receipt and approval of the subdivision/administrative lot split of the Property, Lender hereby agrees to release and reconvey this Security Instrument as to all portions

of Lot 2, Grayhawk Replat 1, except the Phase I development, which Phase I development shall remain as security for this Loan.

IN WITNESS WHEREOF, Borrower has executed and delivered this Security Instrument as of the date and year first above written.

**BORROWER:**

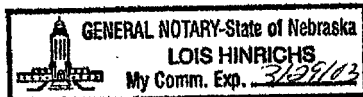
Terra Pacific Omaha, LLC,  
a Nebraska limited liability company

By: *Loren Gunderson*  
Loren Gunderson, Manager

By: *Gene Gallagher*  
Gene Gallagher, Manager

STATE OF NEBRASKA       )  
                                      ) ss.  
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2002, by Loren Gunderson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, on behalf of the company.



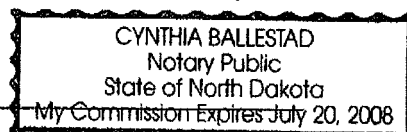
*Lois Hinrichs*  
Notary Public

STATE OF NORTH DAKOTA   )  
                                      ) ss  
COUNTY OF Cass       )

On this 14 day of November, 2002, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Gene Gallagher, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.

*Cynthia Ballestad*  
Notary Public in the State of North Dakota



My Commission Expires: \_\_\_\_\_

**WHEN RECORDED TO BE RETURNED TO:**

TierOne Bank  
c/o Credit Administration Department  
1235 "N" Street  
Lincoln, NE 68508

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Lot 2, Grayhawk Replat 1, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

## EXHIBIT "B"

A. All structural and mechanical components of any structures, buildings, and improvements erected or placed upon the PROPERTY described on the foregoing Exhibit "A," together with all trees, shrubs, flowers, drains and drainage rights appurtenant to, located on, under, or above or used in connection with the PROPERTY and the improvements situated thereon, or any part thereof, whether now existing or hereafter created or acquired;

B. All goods, inventory, machinery, equipment, apparatus, fixtures, furniture, furnishings, appliances, including without limitation all built-in furniture and installations, shelving, partitions, door-stops, vaults, elevators, dumbwaiters, awnings, window shades, venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, screens, linoleum, carpets, plumbing, refrigerators, freezers, heating units, stoves, ovens, water heaters, incinerators, furniture and furnishings, communication systems, all specifically designed installations and furnishings, and all of said articles of property 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 PROPERTY, all building materials and equipment now or hereafter delivered to the PROPERTY and intended to be installed or placed in or about the improvements, items held for sale or lease, items leased to others, and all items used or consumed in DEBTOR'S business;

C. Accounts, accounts receivable, contract rights, chattel paper, including tangible chattel paper and electronic chattel paper, promissory notes, drafts, instruments, investment property, money, letter of credit rights, commercial tort claims, documents and supporting obligations (including but not limited to all of the rents, royalties, issues, profits, revenue, income, proceeds and other benefits of the Premises) arising from the use or enjoyment of all or any portion of the Premises or from any lease agreement pertaining thereto, and all right, title and interest of the DEBTOR in and to all leases of the PROPERTY now or hereafter entered into and all right, title and interest of DEBTOR thereunder, all guarantees of tenants' or occupants' performances thereunder, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of said leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms; in addition all amounts paid or to be paid by the federal or state government or any governmental agency to or on behalf of DEBTOR or any tenant arising from the use or enjoyment of all or any portion of the Premises;

D. All deposit accounts of DEBTOR maintained at the offices or any branch of SECURED PARTY;

E. All rights, title and interest of DEBTOR in any and all building permits, and any other permits, licenses or authorization required by the governmental authorities having or exercising jurisdiction over the PROPERTY, all rights to performance or payment of any other nature which DEBTOR has or may have in the future under any contract or agreement regarding the PROPERTY, all rights to the names under or by which the PROPERTY may at any time be operated or known, and all rights to carry on business under any such names, logos and goodwill in any way relating to the PROPERTY, and all general intangibles, payment intangibles and software now or hereafter associated with or arising from the PROPERTY;

F. All documents of membership and any owners or members association or similar group having responsibility for managing or operating any part of the PROPERTY; all claims and causes of action relating to, arising, or derived from the PROPERTY;

G. All proceeds (including claims and demands therefore) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance (Insurance Proceeds) and condemnation awards on the PROPERTY (Condemnation Proceeds) (all of such proceeds hereinafter called "Proceeds").

Whether now owned or hereafter acquired or arising, and all additions and accessions to, all spare and repair parts, special tools, equipment and replacements thereof, and all proceeds and products of the foregoing wherever located.



MISC 2005087626



JUL 22 2005 07:46 P 5

Attn: Credit Administration  
1235 "N" Street  
Lincoln, NE 68508

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/22/2005 07:46:21.59  
  
2005087626

LOAN MODIFICATION AGREEMENT

Loan No. 01-10174000

This Loan Modification Agreement made as of June 22, 2005, is by and between **Terra Pacific Omaha, LLC, a Nebraska limited liability company**, herein referred to as "Borrower", whose mailing address is c/o Jason Gunderson, 14725 Bedford Plaza, Omaha, Nebraska 68116, and **TierOne Bank**, a federally chartered savings bank, herein referred to as ("Lender"), whose mailing address is 1235 "N" Street, Lincoln, Nebraska 68508 (Collectively the "Parties").

WITNESSETH

WHEREAS, Borrower is indebted to Lender upon that certain Note Secured by Construction Security Agreement dated November 13, 2002, made by Borrower in the original amount of \$6,500,000.00 (the "Note") secured among other things, by a Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement of the same date (the "Security Instrument") which was recorded December 3, 2002, as Instrument No. 2002 45302 in Book 7610, Pages 645 - 661 in the office of the Register of Deeds of Douglas County, Nebraska, and encumbering the real property described as follows (the "Property"):

Lot 1, in Belle Meade, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, the Note is also secured by an Assignment of Leases and Rents dated November 13, 2002, recorded December 3, 2002, as Instrument No. 2002 29719 in Book 1477, Pages 597 - 609, in the office of the Register of Deeds of Douglas County, Nebraska (herein "Assignment of Leases and Rents"), UCC-1 Financing Statements and other security instruments.

WHEREAS, Loren Gunderson and Gene Gallagher (herein "Guarantors") executed Guaranty agreements dated November 13, 2002, guaranteeing Borrower's full and punctual performance under the Note and Security Instrument.

WHEREAS, the Note, Security Instrument, Assignment of Leases and Rents, Repayment Guaranty agreement, and all other documents executed in connection with the loan are collectively referred to herein as the "Existing Loan Documents".

WHEREAS, Lender and Borrower hereby agree to modify certain terms of the Security Instrument as set forth below.

NOW, THEREFORE, in consideration of Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower and Guarantors hereto agree, represent and consent to and with Lender as follows:

- A. Borrower shall execute that certain Replacement Note Secured by Construction Security Agreement of even date herewith and identified in Paragraph C.1 of this Loan Modification Agreement.
- B. Borrower shall pay any closing and recording costs and shall provide and pay the cost of appropriate title endorsement(s) to the original ALTA Loan Policy to Title Insurance, Policy No. MM 4473522, dated December 3, 2003, issued by Old Republic National Title Insurance Company to Lender, insuring that Lender's Security Instrument remains, subsequent to the recording of this Loan Modification Agreement, a first lien on the Property.

*Misc*  
2550 73-02710  
S  
BKP \_\_\_\_\_  
1 DEL \_\_\_\_\_  
COMP *JB*

4 NLTA  
20127

C. Subject to receipt of this Loan Modification Agreement, fully executed, and items "A" and "B" above, the Parties agree to amend and modify the terms and conditions of the Security Instrument as follows:

1. The "Note" identified in the fifth paragraph on Page 1 of the Security Instrument shall be that certain Replacement Note Secured by Construction Security Agreement dated June 22, 2005, in the Principal sum of Six Million Four Hundred Forty Two Thousand Four Hundred Sixty Eight and 87/100 Dollars (\$6,442,468.87) with a Maturity Date of November 1, 2008, which certain Replacement Note Secured by Construction Security Agreement is a modification of and substitution for the Note Secured by Construction Security Agreement dated November 13, 2002. The Replacement Note Secured by Construction Security Agreement dated June 22, 2005, evidences the Principal balance due and owing on the Note dated November 13, 2002;
2. The "Maturity Date" referenced in the fifth paragraph on Page 1 of the Security Instrument is hereby changed to **November 1, 2008**.
3. Paragraph 36 on Page 14 of the Security Instrument is hereby deleted in its entirety and the following substituted therefore:

36. CROSS DEFAULT PROVISION. In addition to the indebtedness evidenced by the Note and secured by this Security Instrument, Borrower has obtained from Lender a loan evidenced by a Note Secured by Construction Security Agreement dated December 12, 2003 in the principal amount of \$575,000.00 and secured by a Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated December 12, 2003 and recorded on December 24, 2003 as Instrument No. 2003246334 in the office of the Register of Deeds of Douglas County, Nebraska. Borrower hereby agrees that a default under the terms and condition of the foregoing note, deed of trust or any other security instruments evidencing or securing said loan, shall constitute a default or event of default under the Note and this Security Instrument, and upon such occurrence, Lender may exercise, at its sole option, any of the rights or remedies contained in the Note, this Security Instrument or any other loan document evidencing or securing the indebtedness secured hereby, subject only to the expiration of any notice and/or grace period therein provided.

4. The following paragraph is hereby added to the Security Instrument:

38. PARTIAL RELEASE PROVISION: Provided no default or Event of Default shall then exist under the Note or this Security Instrument, Lender agrees to cause Trustee to partially reconvey this Security Instrument as to any individual unit or units hereafter created or platted ("Unit") constituting the Property described on Exhibit "A" attached hereto, subject to the following terms and conditions:

- (a) All requests for partial reconveyances shall be made in writing directed to Lender, TierOne Bank, c/o Credit Administration Department, 1235 N Street, Lincoln, NE 68508; and
- (b) With respect to each Unit sold, Borrower shall pay to Lender, 100% of the net sale proceeds for each Unit; and
- (c) All amounts paid to Lender in connection with each partial deed of reconveyance, pursuant to this Paragraph 38, shall be first applied towards a Principal reduction on the Note evidenced as Loan No. 01-10203824. Any remaining release amounts shall be applied as a Principal reduction on the Note evidenced as Loan No. 01-10174000. Such release amounts shall not delay or otherwise extend the date of payment of (or be applied against) any Interest amounts due under the Notes; and
- (d) All partial reconveyances shall be made without warranty and neither Lender nor Trustee shall be responsible for any recording fees in connection therewith.

- D. The Assignment of Leases and Rents dated November 13, 2002, and all other security instruments executed in connection with the loan are also hereby amended and modified to the extent of the foregoing modification of the Security Instrument set forth in this Loan Modification Agreement.
- E. Except as expressly modified by the terms hereof, all of the terms and provisions of the Security Instrument, and all other loan documents evidencing or securing said indebtedness, are hereby ratified and shall remain in full force and effect. By execution hereof, Borrower and Lender concur with all provisions contained in this Loan Modification Agreement.

**A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU AND US FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.**

**LENDER:**

TierOne Bank

By: 

Delmar Williams  
Senior Vice President

**BORROWER:**

Terra Pacific Omaha, LLC,  
a Nebraska limited liability company

By: 

Loren Gunderson, Manager

By: 

Thomas Jackson, Manager



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of ~~June~~<sup>July</sup>, 2005, by Delmar Williams, a Senior Vice President of TierOne Bank, a federally chartered savings bank, on behalf of said bank.



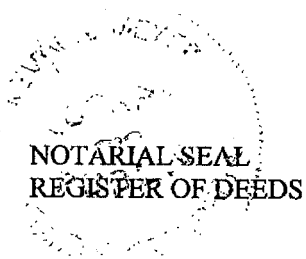
Carmen Jensen  
Notary Public

My Commission Expires: 8/5/08

STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF CASS )

On this 27<sup>th</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren Gunderson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.



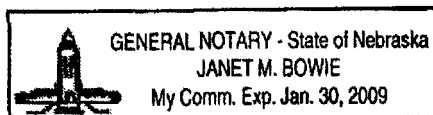
Kevin Amundson  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF ~~LANCASTER~~<sup>Douglas</sup> )

The foregoing instrument was acknowledged before me this 6 day of ~~June~~<sup>July</sup>, 2005, by Thomas Jackson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, on behalf of the company.

Janet M. Bowie  
Notary Public

My Commission Expires: 1-30-09

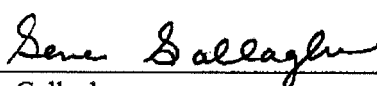


# ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTORS

The undersigned hereby acknowledge receipt of a copy of the foregoing Loan Modification Agreement, and consent to the modification of the Security Instrument, and the other terms hereof. Further the undersigned reaffirm the terms and conditions of our Guaranty agreements as executed in connection with that Note Secured by Construction Security Agreement dated November 13, 2002 and the Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated November 13, 2002 ("Security Instrument"), and agree to be bound thereby as to the indebtedness thereunder or hereunder or under the Replacement Note Secured by Construction Security Agreement and Security Instrument and we hereby waive and release any and all claims and defenses we might otherwise have as to our liability thereunder arising by reason of this Loan Modification Agreement or any act or omission occurring prior to the date hereof.

## GUARANTORS:

  
Loren Gunderson

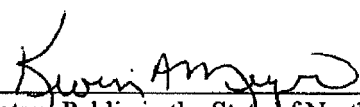
  
Gene Gallagher

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF CASS            )

On this 27<sup>th</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren Gunderson, an individual known unto me.

Witness my hand and notarial seal in said county the date last above written.

NOTARIAL SEAL  
REGISTER OF DEEDS

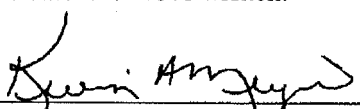
  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF CASS            )

On this 27<sup>th</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Gene Gallagher, an individual known unto me.

Witness my hand and notarial seal in said county the date last above written.

NOTARIAL SEAL  
REGISTER OF DEEDS

  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06



MTG 2003246334

RICHARD A. TAKECHI  
REG. CLERK OF DEEDS  
DOUGLAS COUNTY, NE



DEC 24 2003 09:21 P 15

RECORDED

TierOne Bank  
Attn: Credit Administration Department  
1235 "N" Street  
Lincoln, NE 68508

mtg  
15  
FEE 75.50 FB 7.3 -14164  
BRP \_\_\_\_\_ C/O \_\_\_\_\_ COMP \_\_\_\_\_  
DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FY \_\_\_\_\_

**CONSTRUCTION SECURITY AGREEMENT/  
DEED OF TRUST WITH ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

Loan No. 01-10203824

**THIS CONSTRUCTION SECURITY AGREEMENT/DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT** (herein "Security Instrument") is made this 12<sup>th</sup> day of December, 2003, among the Trustor, Terra Pacific Omaha, LLC, a Nebraska limited liability company (herein "Borrower"), TierOne Bank (herein "Trustee"), and the Beneficiary, TierOne Bank, a corporation organized and existing under the laws of the United States of America, whose address is 1235 "N" Street, Lincoln, Nebraska 68508 (herein "Lender").

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, transfers, assigns, and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit of and security of Lender, under and subject to the terms and conditions hereinafter set forth, the following described real property located in the County of Douglas, State of Nebraska:

(See Exhibit "A" attached hereto and incorporated herein by this reference.)

**IT IS UNDERSTOOD BY THE BORROWER AND LENDER THAT THIS SECURITY INSTRUMENT, WHICH IS SECURED BY THE ABOVE-REFERENCED PROPERTY, IS A CONSTRUCTION SECURITY AGREEMENT; THAT IT DOES OR WILL SECURE AN OBLIGATION WHICH THE BORROWER HAS OR WILL INCUR FOR THE PURPOSE OF MAKING AN IMPROVEMENT OR IMPROVEMENTS ON PROPERTY HEREIN DESCRIBED AND IS A CONSTRUCTION SECURITY INTEREST; AND THAT ADVANCES MADE HEREUNDER WILL BE APPLIED TO THE PAYMENT OF THE CONTRACT PRICE OF SAID IMPROVEMENTS.**

**TOGETHER WITH** all improvements now or hereafter erected on such property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including, but not limited to, heating and cooling equipment, now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Security Instrument; and all of the foregoing, together with said property, or the leasehold estate if this Security Instrument is on a leasehold, are herein referred to as the "Property";

**TO SECURE** to Lender the repayment of the indebtedness evidenced by Borrower's Note Secured by Construction Security Agreement dated of even date herewith (herein "Note"), in the principal sum of **FIVE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$575,000.00)** (the "Principal") with Interest (as defined in the Note) thereon, providing for monthly Installments of Principal and Interest, with the balance of the indebtedness, if not sooner paid, due and payable on November 1, 2004 (the "Maturity Date"); the payment of all sums, with interest thereon, advanced in accordance herewith to protect the real and personal property covered by this Security Instrument; and the performance of the covenants and agreements of Borrower herein contained or contained in the Note or any other document executed by Borrower in connection with the indebtedness secured hereby (jointly, the "Loan Documents").

Borrower covenants to Lender and Trustee that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject

26979 4 N LTA

to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property and otherwise reasonably acceptable to Lender.

Borrower and Lender covenant and agree as follows:

**1. PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the Principal of and Interest on the indebtedness evidenced by the Note, and all prepayment and late charges as provided in the Note or in this Security Instrument.

**2. FUNDS FOR TAXES AND INSURANCE.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on each Due Date under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Security Instrument, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for the insurance required to be maintained pursuant hereto, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills or other reasonable estimates thereof.

The Funds shall be held by Lender and commingled with the Lender's other funds and, further, Lender shall not be liable to Borrower for interest on such Funds. Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If at any point during the term hereof, the amount of the Funds held by Lender shall exceed the amount required to pay the taxes, assessments, insurance premiums and ground rents as they fall due during the next consecutive twelve-month period, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on future monthly payments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums, and ground rents as they fall due during the next consecutive twelve-month period, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If under Paragraph 23 herein the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Security Instrument.

**3. APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender under the Note and Paragraphs 1 and 2 hereof shall be applied by Lender (i) first to interest payable on the Note, (ii) then in payment of amounts payable to Lender by Borrower under Paragraph 2 hereof, and (iii) then to the Principal of the Note.

**4. CHARGES; LIENS.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Security Instrument, and leasehold payments or ground rents, if any, in the manner provided under Paragraph 2 hereof, or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payments directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend such enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

**5. INSURANCE COVERAGES.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require, in an amount equal to the full replacement value of the improvements (80% co-insurance clause permitted), as established by a competent insurance appraiser. Comprehensive general public liability insurance will also be obtained, with a company acceptable to the Lender, for an amount not less than \$2,000,000.00 combined single limit. Rental value insurance equal to the rental value for a twelve (12) month period, as established by a competent insurance appraiser, shall also be carried throughout the term of the loan. The Property, if located in a 100-year flood plain, shall also be covered, for the term of the loan, by flood insurance in an amount at least equal to

the outstanding principal balance of the loan, or the maximum limit of coverage made available with respect to this particular type of property, whichever is less.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. It is required that the insurance carrier hold a Policyholders Rating of at least B+ as set forth in the most current issue of Best's Key Rating Guide for property and casualty companies. All premiums on insurance policies shall be paid in the manner provided under Paragraph 2 hereof, or, if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

In the event any policy is not renewed on or before ten (10) days of its expiration, the Lender, to protect its interest, may procure insurance on the improvements, pay the premiums and such sums shall become immediately due and payable with Interest at the rate set forth in the Note until paid and shall be secured by this Security Instrument. Failure by Borrower to comply may, at the option of Lender, constitute a default under the terms of this Security Instrument.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a Lender's loss payable endorsement/standard mortgagee clause in favor of and in form acceptable to Lender, shall provide that the policies may not be canceled, modified, or not renewed except upon the giving of at least thirty (30) days prior written notice to Lender, and shall also provide that any losses shall be payable to Lender and Borrower, as their respective interest may appear, notwithstanding (i) any act, failure to act or negligence contained in such policy by any named insured, (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms thereof, (iii) any foreclosure or other action or proceeding taken by Lender or foreclosure pursuant to any provision of this Security Instrument, or (iv) any change in title or ownership of the Property. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of said premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair by Borrower of the Property damaged, provided such restoration or repair is economically feasible and the real and personal property covered by this Security Instrument is not thereby impaired. In the event of restoration or repair, the insurance proceeds shall be held in escrow by Lender and disbursed to Borrower as construction is completed and Borrower's contractors are paid. If such restoration or repair is not economically feasible or if the real and personal property covered by this Security Instrument would be impaired, the insurance proceeds shall be applied to the sums secured by this Security Instrument, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Security Instrument.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to Principal shall not extend or postpone the Due Date of the Installments referred to in Paragraphs 1 and 2 hereof or change the amount of such Installments. If under Paragraph 23 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to such sale or acquisition.

**6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Security Instrument is on a leasehold. If this Security Instrument is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declarations or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider were a part hereof.

**7. COMPLIANCE WITH LAWS; HAZARDOUS MATERIALS.** Borrower shall keep the Property in compliance with any and all applicable federal, state and local laws, ordinances and regulations relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and ground water conditions (collectively the "Environmental Laws"). Borrower shall

not use, generate, release, manufacture, store or dispose of on, under or about the Property, or transport to or from the Property, any flammable explosive, radioactive materials, asbestos, petroleum or petroleum products, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under any Environmental Laws (collectively referred to hereinafter as "Hazardous Materials"). Nothing contained herein shall be construed so as to limit Borrower's ability to use and store janitorial and office supplies in reasonable quantities on the Property, provided such supplies are employed, stored and disposed of in accordance with all Environmental Laws. Borrower hereby warrants and represents to Lender, that there are no hazardous Materials on or under the Property. Borrower hereby agrees to indemnify and hold harmless Lender, its directors, officers, employees, and agents, and any successors to Lender's interest, from and against any and all claims, damages and liabilities arising in connection with the presence, use, storage, release, disposal or transport of any Hazardous Materials on, under, from or about the Property, including, without limitations, (i) all damages directly or indirectly arising out of the use, generation, storage or disposal of Hazardous Materials by Borrower or any prior owner or operator of the Property or any other person, including an adjacent property owner or operator, and (ii) all costs of any required or necessary repair, remediation, clean-up or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the Property, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials by any person on or under the Property prior to transfer of title thereto by Lender. THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND BORROWER'S OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL SURVIVE REPAYMENT OF THE NOTE AND THE RECONVEYANCE OF THIS SECURITY INSTRUMENT.

At any time that Lender reasonably suspects the presence of Hazardous Materials, in, on, under, from or around the Property (except with respect to any Hazardous Materials used in the ordinary course of business of Borrower or the tenants of the Property, with respect to which use there has been no violation of Environmental Laws) or upon and after any Event of Default hereunder, Lender shall have the right to require Borrower, at the sole cost and expense of Borrower, to employ a qualified independent environmental firm, acceptable to Lender, to conduct an environmental assessment of the Property to determine whether there is any Hazardous Material above, in, on, under, from or around the Property, such that the Property, any activity related to the Property, or the Hazardous Materials is subject to regulation under Environmental Laws. Lender shall instruct such environmental firm to conduct such assessment in such a manner as to minimize interference with the operation of the Property.

**8. BANKRUPTCY.** The parties agree that Borrower has substantial duties of performance apart from its mere financial obligations under the Security Instrument, the Note and other Loan Documents or obligations which this Security Instrument secures, and that parties other than the Borrower could not adequately and fully perform the covenants to be performed by Borrower in this Security Instrument. The parties also agree that this Security Instrument is an agreement for the making of loans and for the extending of debt financing or financial accommodations. No assumption of or assignment of this Security Instrument shall be allowed in bankruptcy. Should an assumption of or assignment of this Security Instrument be permitted in violation of this covenant, the parties agree that Lender will not have adequate assurance of performance unless and until Lender is allowed access to adequate financial and other information to satisfy itself that the trustee or proposed assignee is fully able to assume the financial and personal covenants of Borrower under this agreement, in full accordance with its terms. The parties further agree that the definition of the term "adequate assurance" as set forth in the United States Bankruptcy Code, as amended, shall be applicable directly or by analogy to any determination of adequate assurance in connection with this Security Instrument.

In the event Borrower becomes a debtor in bankruptcy, the debtor in possession or trustee shall not be permitted to use, sell or lease any of the Property, whether or not in the ordinary course of business, without providing adequate protection to Lender. The parties agree that the language in the United States Bankruptcy Code, as amended, shall be the definition of the term "adequate protection" in connection with any use, sale or lease of the Property. The cash payment referred to in that section shall mean the full payments required under the Note and all other indebtedness which this Security Instrument secures.

The parties agree that because of the extreme financial importance to Lender of this transaction, Lender will be irreparably harmed by any stay of its collection efforts or the exercise of its remedies under this Security Instrument. In the event a plan of reorganization is proposed under Chapter 11 of the United States Bankruptcy Code, as amended, the parties also agree that the plan will be fair and equitable to Lender, as a secured creditor, only if Lender realizes under the plan the full payments required under the Note and all other indebtedness which this Security Instrument secures.

**9. AMERICANS WITH DISABILITIES ACT.** At its sole expense, Borrower shall cause the Property to be and remain in compliance with the Americans with Disabilities Act and all similar state and local laws, rules and regulations (hereafter "ADA") during the term hereof. If the Property is remodeled or altered while this Security Instrument is in effect, the Borrower shall have the work performed so that the Property continues to comply with the ADA. Borrower shall furnish to Lender, if requested, a written opinion from a licensed architect that the remodeling/alterations comply with the ADA. Borrower hereby warrants and represents to Lender that there are no pending or threatened claims by the Department of Justice or third parties relating to the ADA. Borrower hereby agrees to indemnify and hold harmless the Lender, its directors, officers, employees and agents, and any successor to Lender's interest, from and against any and all claims, damages, losses and liabilities arising in connection with the violation of the ADA. THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND BORROWER'S OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL SURVIVE THE REPAYMENT OF THE NOTE AND THE RECONVEYANCE OF THIS SECURITY INSTRUMENT.

**10. PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument or in any other Loan Document, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, enforcement of laws or regulations, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, incurrence of attorneys' fees and entry upon the Property to make repairs.

Any amounts disbursed by Lender pursuant to this Paragraph 10, with Interest thereon, shall become additional indebtedness of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate of THIRTEEN AND ONE-HALF PERCENT (13.50%), unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 10 shall require Lender to incur any expense or take any action hereunder.

**11. INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause thereof related to Lender's interest in the Property.

**12. REPRESENTATIONS AND WARRANTIES OF BORROWER.** In order to induce Lender to execute and deliver this Security Instrument and perform hereunder, Borrower makes the following representations and warranties to Lender, which representations and warranties shall remain in effect throughout the term of this Security Instrument, and shall survive and shall be unaffected by any investigations, inspections or inquiries made by Lender, the recording of any of the Loan Documents, or the performance by Lender and Borrower hereunder:

(a) Organization: Borrower is duly organized, validly existing and in good standing as a limited liability company under the laws of the State of Nebraska, is qualified, in good standing, and authorized to do business in each of the jurisdictions in which the nature of its activities or properties require such authorization, and has full power and authority to own its properties, carry on this business as now being conducted, and to enter into, deliver and perform under this Security Instrument.

(b) Authorization: The execution and delivery of this Security Instrument and the satisfaction of Borrower's obligations hereunder have been duly authorized by all necessary company action in accordance with the laws of the State of Nebraska. Each of the Loan Documents, upon execution and delivery to Lender, constitutes a legally valid and binding agreement of Borrower, enforceable against Borrower in accordance with its terms, except as such enforcement may be qualified or limited by bankruptcy, insolvency, or other similar laws affecting creditors' rights in general.

(c) No Contravention: The execution, delivery, and performance of this Security Instrument by Borrower will not, immediately or with the passage of time, the giving of notice or otherwise, result in (i) the breach of, or constitute a default under, or in any manner release any party thereto from, or accelerate any obligations under, any of the terms or provisions of any lease, security agreement, mortgage, note, indenture, security instrument, license, permit, contract, agreement, or other instrument or document of any kind or nature to which Borrower is a party of by which it or its property is bound or affected, or any restriction to which it or its property is subject, (ii) the creation or

acceleration of any lien or encumbrance on the property of Borrower, (iii) a violation of any order, writ, injunction, or decree by which Borrower is bound of any court, administrative agency, or governmental body, or (iv) the breach of the terms of Borrower's Articles of Organization and Operating Agreement.

(d) Disclosure: No representation or warranty of Borrower in this Security Instrument or any statement or certificate furnished or to be furnished by Borrower pursuant to this Security Instrument or in connection with the transactions contemplated herein contains or shall contain any untrue, inaccurate, or misleading statement of material fact or omits to state a material fact necessary in order to make a statement contained therein not misleading.

(e) Financial Information: The most recent annual financial statements of Borrower and the Guarantors, Loren W. Gunderson and Eugene P. Gallagher, delivered to Lender during the loan application process at Lender's request (the "Annual Financial Statements and Federal Income Tax Returns") accurately present the financial condition of the Guarantors referred to therein.

(f) Litigation: No suits, actions, governmental investigations or inquiries, proceeding (including, without limitation, condemnation or eminent domain proceedings), or other litigation is pending or, to the best of Borrower's knowledge, proposed or threatened, against or affecting Borrower, the Property, or the Collateral which, singularly or in the aggregate, if adversely determined, would materially inhibit or impair Borrower's ability to perform hereunder or reduce or restrict Borrower's interest in the Property or the Collateral, and Borrower knows of no basis for any such litigation.

(g) Loan Documents: All representations and warranties of Borrower contained in the Note, Assignment of Leases and Rents and the Hazardous Substances Certificate and Indemnity Agreement entered into by Borrower are true and accurate in all material respects to the extent not inconsistent with the representations and warranties of Borrower contained herein.

(h) Property: Neither the whole nor any portion of the Property is subject to any pending condemnation, taking, or other similar proceeding by any public or private authority, and, to the best of Borrower's knowledge, no such condemnation or taking is threatened or contemplated with respect to the Property. Borrower is unaware of and has not been notified of any plan, study, or effort by any governmental authority or agency which in any way affects or would affect the present use or zoning of the Property nor any existing, proposed, or contemplated plan to widen, modify, or realign any street or highway adjoining the Property. The Property and the occupancy by or operation of the Borrower's business at the Property is not in violation of any law or any building, zoning, fire, health, or other ordinance, code, or regulation, and neither Borrower nor any tenant has received any notice or request from any governmental authority, insurance company or board of fire underwriters alleging any such violation or requiring or calling attention to the need for any work, repairs, construction, alterations or installation on or in connection with the Property which has not been heretofore complied with. There exist adequate rights of egress from and ingress to the Property, and there is currently adequate access to all water, sewer, gas, electric, telephone, drainage, and other utility equipment and services required by law or necessary for the operation of the business currently operated on the Property, and, to the best of Borrower's knowledge, no fact, condition, or threatened or proposed action exists which would or could have the effect of diminishing such rights.

(i) Environmental Matters: For purposes of this Security Instrument, "Hazardous Substances" shall mean asbestos in a friable state or condition, non-contained polychlorinated biphenyls ("PCBS"), petroleum or petroleum products, and any hazardous or toxic waste or substance or related material defined or treated as a "hazardous substance" or "toxic substance" or "hazardous waste" or "toxic waste" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.) ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.) ("RCRA"), or any other applicable federal, state or local statute, law or ordinance, and any rules and regulations promulgated thereunder (jointly, the "Applicable Environmental Law"). No Hazardous Substances have been generated, used, discharged, dispersed, released, disposed of, or allowed to escape on or under the Property in violation of Applicable Environment Law. No asbestos or asbestos-containing substance presently



in a condition or in a sufficient quantity as to violate Applicable Environmental Law has been installed, used, incorporated into or disposed of on the Property. No underground liquid storage tanks are located on the Property. No notice has been received by Borrower or any tenant with respect to, nor is Borrower aware of any basis for, any federal, state or local agency investigation, administrative order, consent order or decree, litigation, or settlement regarding the existence of Hazardous Substances on or under the Property or the use, generation, or disposal thereof by Borrower or any tenant or previous owner or tenant. The Property is and at all times has been in compliance with Applicable Environmental Laws. No notice, demand, claim, or other communication has been received by Borrower or any tenant from any governmental or other entity or individual claiming any violation of or demanding compliance with any Applicable Environmental Law, or demanding payment, contribution, remedial action or any other action or inaction with respect to any actual or alleged environmental damage or condition. THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND BORROWER'S OBLIGATIONS PURSUANT TO THIS PARAGRAPH 12 (i), SHALL SURVIVE REPAYMENT OF THE NOTE AND THE RECONVEYANCE OF THIS SECURITY INSTRUMENT.

**13. CONDEMNATION.** Borrower shall promptly provide Lender with notice of any condemnation, eminent domain, change of grade or other proceedings with respect to the Property. All moneys and awards payable as damages and/or compensation for the taking of title to or possession of, or for damage to, or on account of change of grade affecting, any portion of the Property by reason of any condemnation, eminent domain, change of grade, or other proceeding shall, at the option of the Lender, be paid to the Lender, and such moneys and awards are hereby assigned to Lender, and judgment therefor shall be entered in favor of Lender, and when paid shall be used at its option toward the payment of any indebtedness, taxes, assessments, repairs or other items for the payment of which this Security Instrument is given as security, whether the same be then due or not and in such order or manner as Lender may determine, or for the restoration or repair of the Property, and any amount not so used shall be released by the Lender to the Borrower. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to Principal shall not extend or postpone the Due Date of the Installments referred to in Paragraphs 1 and 2 hereof or change the amount of such Installments.

**14. BORROWER NOT RELEASED.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest or permitted assignee of Borrower shall not operate to release, in any manner, the liability of the original Borrower or Borrower's guarantors. Lender shall not be required to commence proceedings against such successor or assignee or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's guarantors.

**15. LENDER'S POWERS.** Without affecting the liability of Borrower or any other person liable for the payment of any obligation secured hereby, and without affecting the lien or charge of this Security Instrument upon any portion of the Property not then or heretofore released as security for the full amount of all unpaid obligations, Lender may, from time to time and without notice to Borrower (i) release any person so liable, (ii) extend or renew the maturity or alter any of the terms of any such obligations, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Lender's option any parcel, portion or all of the Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compromises, settlements, or other arrangements with debtors in relation thereto.

**16. FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the subsequent exercise of any such right or remedy. Likewise, the waiver by Lender of any default by Borrower hereunder shall not be deemed to be a waiver of any other or subsequent default by Borrower hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Security Instrument in the event of Borrower's default hereunder.

**17. REMEDIES CUMULATIVE.** All remedies provided in this Security Instrument are distinct and cumulative to any other right or remedy under this Security Instrument or afforded by law or equity, and may be exercised concurrently, independently or successively.

**18. ASSIGNMENT; SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** Lender may assign its rights and obligations hereunder by notice to Borrower. Borrower may not assign its rights or obligations hereunder, whether by contract or operation of law, without the prior written consent of Lender, which may be withheld in Lender's sole discretion. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and permitted assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Security Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

**19. NOTICE.** Except for any notice required under applicable law to be given in another manner, (i) any notice to Borrower provided for in this Security Instrument shall be in writing to be effective and given by mailing such notice by first class U.S. mail, postage prepaid, to Borrower, c/o Loren Gunderson, 2618 173<sup>rd</sup> Avenue SE, Argusville, North Dakota 58005 or at such other address as Borrower may designate by notice to Lender as provided herein, and (ii) any such notice to Lender shall be in writing to be effective and given by mailing such notice by first class U.S. mail, postage prepaid, to Lender c/o Credit Administration Department, 1235 "N" Street, Lincoln, Nebraska 68508, or to such other address as Lender may designate by notice to Borrower as provided herein. Any such notice shall be effective upon deposit with U.S. mail. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender only when given in the manner designated herein.

**20. UNIFORM SECURITY INSTRUMENT; GOVERNING LAW; SEVERABILITY.** This form of Security Instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. In the event that any provision or clause of this Security Instrument or the Note or any other Loan Document conflicts with applicable law, such conflict shall not affect the other provisions of this Security Instrument or the Note or any other Loan Document which can be given effect without the conflicting provision, and to this end the provisions of the Security Instrument and the Note and the Loan Documents are declared to be severable. This Security Instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought. This Security Instrument shall be governed by and construed in accordance with the Laws of the State in which the Property is located, except to the extent that Federal laws or the rules and regulations of the Office of Thrift Supervision, or its successor, preempt the laws of the State in which the Property is located, in which case Lender shall be entitled to such Federal rights and remedies without regard to conflicting limitation imposed by State law.

**21. BORROWER'S COPY.** Borrower acknowledges receipt of a conformed and completed copy of the Note and of this Security Instrument at the time of execution or after recordation hereof.

**22. TRANSFER OF THE PROPERTY; ASSUMPTION.** If the Borrower or any successor in interest to Borrower or the Property described in this Security Instrument should, without the prior written consent of the Lender, assign the Note or sell, convey, transfer, or alienate the Property, or any part thereof, or any interest therein, or be divested of its title or any interest therein in any manner, whether voluntary or involuntary, by contractual arrangement or operation of law, or if the Borrower or any successor in interest to Borrower or the Property is a corporation, partnership, limited liability company, or joint venture, and more than fifty percent (50%) of the equity ownership of such corporation, partnership, limited liability company, or joint venture is, without the prior written consent of Lender, sold, conveyed, transferred or alienated, either voluntarily or involuntarily, by contractual arrangement or operation of law, then the Lender shall have the right at its sole option to declare any and all indebtedness due hereunder, or any other obligation secured by this Security Instrument, immediately due and payable.

Not less than thirty (30) days prior to any such sale or other transfer, Borrower shall notify Lender in writing of the proposed sale or transfer and shall provide Lender with such information concerning the terms and conditions of the sale or transfer and the creditworthiness and financial condition of the proposed purchaser or transferee as Lender may require. Lender may withhold its consent to any such sale or other transfer in Lender's sole discretion.

A consent and waiver of Lender's option to accelerate shall be subject to (a) the credit of the purchaser or transferee being satisfactory to the Lender; (b) an assumption fee of one percent (1%) of the then outstanding Principal balance being paid to Lender; (c) assumption of full and unconditional liability on the indebtedness by all purchasers or transferees of the Property on a joint and several basis; and (d) any other requirements reasonably necessary to protect Lender's interest in the Property. Any agreement regarding Lender's consent and waiver of its option to accelerate must be in writing and reached prior to the date of the sale or transfer. Waiver of any right granted to the Lender by the provisions of this paragraph as to one transaction, event or occurrence shall not be deemed to be a waiver of any right as to any subsequent transaction, event or occurrence.

The sale or transfer of the Property subject to this Security Instrument or the assignment of the Note shall not operate to release the Borrower or any guarantor of the Note without the express written agreement of Lender, which may be withheld in Lender's sole discretion.

If the ownership of the Property subject to this Security Instrument becomes vested in a person(s), corporation, partnership, limited liability company, or joint venture other than the Borrower, the Lender may, without notice to the Borrower, deal with such successor or successors in interest with reference to the Security Instrument and the debt evidenced hereby secured as with the Borrower, and may forebear to sue, alter time for payment of the debt, change the Interest rate and/or payments of the debt hereby secured, without discharging or in any way affecting the liability of the Borrower hereunder or upon the debt secured.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with Paragraph 19 hereof. Such notice shall provide a period of not less than ten (10) days from the date the notice is mailed within which the Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Paragraph 23 hereof.

**23. ACCELERATION; REMEDIES.** Except as provided in Paragraph 22 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Security Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Security Instrument, or if there shall be filed by or against Borrower an action under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors; or there shall be appointed any trustee, receiver, or liquidator of Borrower of all or any part of the Property, or the rents, issues or profits thereof, or Borrower shall make any general assignment for the benefit of creditors, or abandonment of the Property, Lender prior to acceleration shall mail notice to Borrower as provided in Paragraph 19 hereof specifying (i) the breach; (ii) the action required to cure such breach; (iii) a date, not less than ten (10) days from the date notice is mailed to Borrower, by which such breach must be cured; and (iv) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Security Instrument to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all costs and expenses actually incurred in pursuing the remedies provided in this Paragraph 23, including, but not limited to, attorneys' fees actually incurred.

If the power of sale is invoked, Trustee shall record a notice of default in each county in which the Property or some part thereof is located and shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine and in the manner prescribed by applicable law. Trustee may postpone sale of all or any part of the Property by public announcement at the time and place of any previously scheduled sale and in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any such sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the purchaser a Trustee's deed conveying the Property sold. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, Trustee's fees of not more than 1/2 of 1% of the gross sale price, attorneys' fees and costs of title evidence; (b) to all sums secured by this Security Instrument, in such order as Trustee shall determine; and (c) the excess, if any, to the person or persons legally entitled thereto.

**24. ACCELERATION; PREPAYMENT PRIVILEGE.** Upon any default by Borrower and following the acceleration of maturity as herein provided, a tender of payment of the amount necessary to satisfy the entire or any portion of indebtedness secured hereby, including the late payment fee and interest accrued at the default rate set forth in the Note, made at any time prior to foreclosure sale (including sale under power of sale) by the Borrower, its successors or permitted assigns or by anyone on behalf of Borrower, its successors or permitted assigns, shall constitute an evasion of the prepayment terms of said Note and be deemed to be a voluntary prepayment thereunder and any such payment, to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in said Note.

**25. BORROWER'S RIGHT TO REINSTATE.** Notwithstanding Lender's acceleration of the sums secured by this Security Instrument, Borrower shall have the right to have any proceedings begun by Lender to enforce this Security Instrument discontinued at any time prior to the earlier to occur of (i) the fifth day before the sale of the Property pursuant to the power of sale contained in this Security Instrument, or (ii) entry of a judgment enforcing this Security Instrument if: (a) Borrower pays Lender all sums which would be then due under this Security Instrument and the Note, had no acceleration occurred, including the late payment fee and Interest accrued at the default rate set forth in the Note; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Security Instrument; (c) Borrower pays all expenses actually incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Security Instrument and in enforcing Lender's and Trustee's remedies as provided in Paragraph 23 hereof, including, but not limited to, attorneys' fees; and (d) Borrower takes such other action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's interest in the Property, and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unimpaired. Upon such payment and cure by Borrower, this Security Instrument and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**26. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property pursuant to the Assignment of Leases and Rents dated of even date herewith by Borrower in favor of Lender, provided that Borrower shall, prior to acceleration under Paragraph 23 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

**27. SECURITY AGREEMENT AND FINANCING STATEMENT UNDER UNIFORM COMMERCIAL CODE.** This Security Instrument encumbers, and Borrower hereby grants Lender a security interest in, Borrower's interest in all personal property of any kind whatsoever, whether tangible or intangible, whether or not any such personal property is now or becomes a "fixture", which is used or will be used in construction of, or is or will be placed upon or is derived from or used in any connection with the use, occupancy or enjoyment of the Property. Such personal property ("Collateral") shall include those items as shown on the attached Exhibit "B".

"Fixtures" shall include all articles of personal property, furniture and furnishings which are so related to the Property such that an interest arises in them under the real estate laws of the State of Nebraska. To the extent of the existence of Collateral encumbered by this Security Instrument, this Security Instrument shall constitute a security agreement and when filed with the Nebraska Secretary of State and in the real property records of the county where the Property is situated is intended to create a perfected security interest in such Collateral in favor of Lender and to constitute a "fixture filing" in accordance with the provisions of Nebraska Uniform Commercial Code. This Security Instrument shall be self-operative with respect to such Collateral, but Borrower agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Lender may request in order to impose the lien hereof more specifically upon any such Collateral and to pay the recording and/or filing fees associated therewith. For purpose of treating this Security Instrument as a security agreement and financing statement, Lender shall be deemed to be the Secured Party and Borrower shall be deemed to be the Debtor.

**28. RECONVEYANCE.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all Notes evidencing indebtedness secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

**29. SUBSTITUTE TRUSTEE.** Lender, at Lender's option, may from time to time by an instrument recorded in the Register of Deeds' office of the County in which this Security Instrument is recorded and otherwise in accordance with the provisions of Neb. Rev. Stat. § 76-1004 remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

**30. OTHER DOCUMENTS.** The undersigned has also executed other Loan Documents simultaneously with the Note and this Security Instrument. The parties hereto agree that said Loan Documents shall survive the closing, and that a default or violation of any one Loan Document is a default or violation of all Loan Documents, and that as a result thereof, the Security Instrument can be foreclosed or a default can be declared.

**31. ANNUAL OPERATING STATEMENTS.** Borrower shall furnish to Lender, Borrower certified annual operating statements for the Property by April 1 of each year during the term of the loan, which statements shall be prepared in accordance with generally accepted accounting principles consistently applied. Said statements shall include a rent roll, gross income (itemized as to source), operating expenses (itemized) and net income before federal income taxes.

Borrower shall furnish to Lender, annual financial statements for the Borrower by April 1 of each year during the loan term. Said statements shall include a balance sheet, profit and loss statement, and any supplemental schedules. If Borrower fails to furnish said statements, Lender shall, at its option, have the right to audit Borrower's books and records. Upon request, Borrower will also provide copies of its federal income tax returns to Lender.

Guarantors, Loren W. Gunderson and Eugene P. Gallagher, shall submit personal financial statements dated and signed certifying to the accuracy of the statement by April 1 of each year during the term of the loan. Said personal financial statements must be current (not more than 60 days old) when submitted to Lender. Upon request, Guarantors will also provide copies of their respective federal income tax returns to Lender.

**32. SECONDARY FINANCING.** Borrower hereby agrees that there shall be no additional secondary financing on the Property without the prior written consent of Lender.

**33. CONSTRUCTION LOAN PROVISIONS.** Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Security Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Security Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Security Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefore.

From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may invoke all rights and remedies provided in this Security Instrument, including the acceleration of all sums secured by this Security Instrument, or (iii) may exercise any other right or remedy available to Lender under the Loan Documents or such remedies as may be provided at law or in equity. All such rights and remedies shall be cumulative.

**34. REQUEST FOR NOTICE.** Borrower and Lender hereby request that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Borrower and Lender at their respective mailing addresses set forth above.

**35. CROSS DEFAULT PROVISION.** In addition to the indebtedness evidenced by the Note and secured by this Security Instrument, Borrower has also obtained from Lender a loan evidenced by a Note Secured by Construction Security Agreement dated November 13, 2002 in the principal amount of \$6,500,000.00 and secured by a Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated November 13, 2002 and recorded on December 3, 2002 in Book 7610 at Page 645 in the Register Deeds office of Douglas County, Nebraska. Lender has also previously made a loan to Borrower in the principal sum of \$1,025,000.00 which is evidenced by a Note Secured by Deed of Trust dated October 29, 2001 and secured by a Deed of Trust and Security Agreement dated October 29, 2001 and recorded on November 7, 2001 in Book 6783, Pages 572-586 in the Register of Deeds office of Douglas County, Nebraska; which was modified by that Loan Modification Agreement dated May 15, 2002 and recorded May 15, 2002 in Book 1442, Pages 312-316; and that Second Loan Modification Agreement dated November 13, 2002 and recorded on December 3, 2002 in Book 1477, Pages 620-626; and that Third Loan Modification Agreement dated December 12, 2003. Borrower hereby agrees that any default or event of default under the terms and conditions of the foregoing notes, deeds of trust or any other security instruments evidencing or securing said loans, shall constitute a default or event of default under the Note and this Security Instrument, and upon such occurrence, Lender may exercise, at its sole option,

any of the rights or remedies contained in the Note, this Security Instrument or any other loan document evidencing or securing the indebtedness secured hereby, subject only to the expiration of any notice and/or grace period therein provided.

**36. CROSS-COLLATERAL PROVISION.** In addition to the indebtedness and obligations secured hereby and all future advances made at Lender's option or advanced to protect the security of the Security Instrument, this Security Instrument shall further secure Borrower's repayment of the indebtedness and performance of the obligations evidenced or secured by the following:

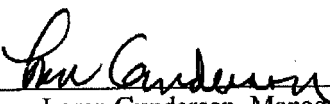
(a) Borrower's Note Secured by Construction Security Agreement dated November 13, 2002 in the original principal sum of \$6,500,000.00 made payable to the order of Lender and its assigns and the Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated November 13, 2002 given by Borrower to Lender as security for said Note.

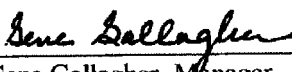
(b) Borrower's Note Secured by Deed of Trust dated October 29, 2001 in the original principal sum of \$1,025,000.00 made payable to the order of Lender and its assigns and the Deed of Trust and Security Agreement recorded November 7, 2001 in Book 6783, Pages 572-586 in the office of the Register of Deeds of Douglas County, Nebraska given by Borrower to Lender as security for said Note which was modified by that Loan Modification Agreement dated May 15, 2002 and recorded May 15, 2002 in Book 1442, Pages 312-316 and that Second Loan Modification Agreement dated November 13, 2002 and recorded on December 3, 2002 in Book 1477, Pages 620-626 and that Third Loan Modification Agreement dated December 12, 2003.

IN WITNESS WHEREOF, Borrower has executed and delivered this Security Instrument as of the date and year first above written.

**BORROWER:**

Terra Pacific Omaha, LLC,  
a Nebraska limited liability company

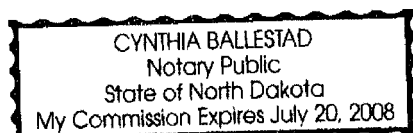
By:   
Loren Gunderson, Manager

By:   
Gene Gallagher, Manager

STATE OF NORTH DAKOTA     )  
   ) ss  
 COUNTY OF CASS             )

On this 12 day of December, 2003, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren Gunderson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.



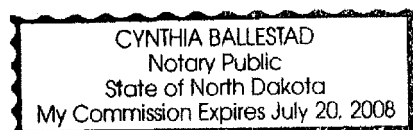
Cynthia Ballestad  
 Notary Public in the State of North Dakota  
 My Commission Expires: 7/20/08

NOTARIAL SEAL  
 REGISTER OF DEEDS

STATE OF NORTH DAKOTA     )  
   ) ss  
 COUNTY OF CASS             )

On this 12 day of December, 2003, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Gene Gallagher, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.



Cynthia Ballestad  
 Notary Public in the State of North Dakota  
 My Commission Expires: 7/20/08

NOTARIAL SEAL  
 REGISTER OF DEEDS

WHEN RECORDED TO BE RETURNED TO:

TierOne Bank  
 c/o Credit Administration Department  
 1235 "N" Street  
 Lincoln, NE 68508

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

Lot 2, Grayhawk Replat 1, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.



## EXHIBIT "B"

A. All structural and mechanical components of any structures, buildings, and improvements erected or placed upon the PROPERTY described on the foregoing Exhibit "A," together with all trees, shrubs, flowers, drains and drainage rights appurtenant to, located on, under, or above or used in connection with the PROPERTY and the improvements situated thereon, or any part thereof, whether now existing or hereafter created or acquired;

B. All goods, inventory, machinery, equipment, apparatus, fixtures, furniture, furnishings, appliances, including without limitation all built-in furniture and installations, shelving, partitions, door-stops, vaults, elevators, dumbwaiters, awnings, window shades, venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, screens, linoleum, carpets, plumbing, refrigerators, freezers, heating units, stoves, ovens, water heaters, incinerators, furniture and furnishings, communication systems, all specifically designed installations and furnishings, and all of said articles of property 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 PROPERTY, all building materials and equipment now or hereafter delivered to the PROPERTY and intended to be installed or placed in or about the improvements, items held for sale or lease, items leased to others, and all items used or consumed in DEBTOR'S business;

C. Accounts, accounts receivable, contract rights, chattel paper, including tangible chattel paper and electronic chattel paper, promissory notes, drafts, instruments, investment property, money, letter of credit rights, commercial tort claims, documents and supporting obligations (including but not limited to all of the rents, royalties, issues, profits, revenue, income, proceeds and other benefits of the Premises) arising from the use or enjoyment of all or any portion of the Premises or from any lease agreement pertaining thereto, and all right, title and interest of the DEBTOR in and to all leases of the PROPERTY now or hereafter entered into and all right, title and interest of DEBTOR thereunder, all guarantees of tenants' or occupants' performances thereunder, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of said leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms; in addition all amounts paid or to be paid by the federal or state government or any governmental agency to or on behalf of DEBTOR or any tenant arising from the use or enjoyment of all or any portion of the Premises;

D. All deposit accounts of DEBTOR maintained at the offices or any branch of SECURED PARTY;

E. All rights, title and interest of DEBTOR in any and all building permits, and any other permits, licenses or authorization required by the governmental authorities having or exercising jurisdiction over the PROPERTY, all rights to performance or payment of any other nature which DEBTOR has or may have in the future under any contract or agreement regarding the PROPERTY, all rights to the names under or by which the PROPERTY may at any time be operated or known, and all rights to carry on business under any such names, logos and goodwill in any way relating to the PROPERTY, and all general intangibles, payment intangibles and software now or hereafter associated with or arising from the PROPERTY;

F. All documents of membership and any owners or members association or similar group having responsibility for managing or operating any part of the PROPERTY; all claims and causes of action relating to, arising, or derived from the PROPERTY;

G. All proceeds (including claims and demands therefore) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance (Insurance Proceeds) and condemnation awards on the PROPERTY (Condemnation Proceeds) (all of such proceeds hereinafter called "Proceeds").

Whether now owned or hereafter acquired or arising, and all additions and accessions to, all spare and repair parts, special tools, equipment and replacements thereof, and all proceeds and products of the foregoing wherever located.



MISC 2005009252



JAN 26 2005 07:30 P 4

73-14164

FEE 20 FB

BKP C/O COMP

DEL SCAN FY

When recorded return to:  
 TierOne Bank  
 Attn: Credit Administration  
 1235 "N" Street  
 Lincoln, NE 68508

Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 1/26/2005 07:30:40.65  
  
 2005009252

# LOAN MODIFICATION AGREEMENT

Loan No. 01-10203824

This Loan Modification Agreement, made as of December 17, 2004, is by and between **Terra Pacific Omaha, LLC, a Nebraska limited liability company**, herein referred to as "Borrower" whose mailing address is c/o Terra Pacific Midwest, Inc., Attn: Loren Gunderson, 2618 173rd Avenue SE, Argusville, North Dakota 58005, and **TierOne Bank**, a corporation organized and existing under the laws of the United States of America, herein referred to as "Noteholder/Lender", whose mailing address is 1235 "N" Street, Lincoln, Nebraska 68508 (Collectively the "Parties").

## WITNESSETH

WHEREAS, Borrower is indebted to Noteholder/Lender upon that certain Note Secured by Deed of Trust dated December 12, 2003, made by Borrower in the original amount of \$575,000.00 (the "Note") secured among other things, by a Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement of the same date (the "Deed of Trust") which was recorded December 24, 2003 as Instrument Number 2003246334 at the Register of Deeds Office of Douglas County, Nebraska, UCC-1 Financing Statements and other security instruments, encumbering the real property described as follows (the "Property"):

Lot 2, Grayhawk Replat 1, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska.

WHEREAS, Loren W. Gunderson and Eugene P. Gallagher, (the "Guarantors") executed Repayment Guaranty agreements dated December 12, 2003 guaranteeing Borrower's full and punctual performance under the Note and Deed of Trust both dated December 12, 2003.

WHEREAS, the Note, Deed of Trust, Repayment Guaranty agreements, and all other documents executed in connection with the Loan are collectively referred to herein as the "Existing Loan Documents".

WHEREAS, the outstanding principal balance of the Note, after the December 1, 2004 payment received by Noteholder/Lender, is \$575,000.00 (the "Loan").

WHEREAS, Noteholder/Lender and Borrower hereby agree to modify certain terms of the Note and Deed of Trust as set forth below.

NOW, THEREFORE, in consideration of Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower and Guarantors hereto agree, represent and consent to and with Noteholder/Lender as follows:

- A. Borrower and Guarantors shall pay any closing and recording costs and shall provide and pay the cost of appropriate title endorsement(s) to the original ALTA Loan Policy of Title Insurance Policy No. MM 5373403, dated December 24, 2003, issued by Old Republic National Title Insurance Company to Noteholder/Lender, insuring that Noteholder/Lender's Deed of Trust remains, subsequent to the recording of this Loan Modification Agreement, a third lien on the Property.

4 ALTA 26979

RETURN TO: MORGAN

B. Subject to receipt of this Loan Modification Agreement, fully executed, and compliance with conditions referenced in Paragraph A above, the Parties agree to amend and modify the terms and conditions of the Note and Deed of Trust both dated December 12, 2003, as follows:

1. The second paragraph of the Note dated December 12, 2003, is hereby deleted and the following substituted therefore:

The "Maturity Date" referenced in the second paragraph on Page 1 of the Note is hereby changed to **November 1, 2005**.

2. The Deed of Trust dated December 12, 2003, shall be amended as follows:

The "Maturity Date" referenced in the fourth paragraph on Page 1 of the Deed of Trust is hereby changed to **November 1, 2005**.

C. Except as expressly modified by the terms hereof, all of the terms and provisions of the Note, and all other loan documents evidencing or securing said indebtedness, including the Deed of Trust, are hereby ratified and shall remain in full force and effect. By execution hereof, Borrower and Noteholder/Lender concur with all provisions contained in this Loan Modification Agreement.

**Note:** A credit agreement must be in writing to be enforceable under Nebraska law. To protect Borrower and Noteholder/Lender from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodations in connection with this loan of money or grant or extension of credit, or any agreement of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit must be in writing to be effective.

**NOTEHOLDER/LENDER:**

TierOne Bank

By: 

Delmar E. Williams  
Senior Vice President

**BORROWER:**

Terra Pacific Omaha, LLC,  
a Nebraska limited liability company

By: 

Loren Gunderson, Manager

By: 

Gene Gallagher, Manager

(see next page for notaries)

Prepared by: TierOne Bank, Carmen Jensen, PO Box 83009, Lincoln, NE 68501 – 402-479-0513

**DEED OF PARTIAL RECONVEYANCE**

**Loan No. 01-10174000**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, for good and valuable consideration received upon the Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement executed by **Terra Pacific Omaha, LLC, a Nebraska limited liability company**, Trustor to **TierOne Bank**, Trustee and Beneficiary, dated November 13, 2002, and recorded December 3, 2002 in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2002-45302 in Book 7610, Pages 645-661, said Beneficiary does hereby request that this Deed of Partial Reconveyance be executed and delivered.

NOW THEREFORE, for such consideration and in accordance with the request of the Beneficiary, the undersigned Trustee does by these presents, grant, remise, release and reconvey to the persons entitled thereto all of the interest and estate derived to said Trustee by or through said Deed of Trust in the following described premises, but only as to said premises:

Lot 2, in Belle Meade, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

TOGETHER WITH ALL buildings, fixtures, improvements and appurtenances belonging to such premises.

THIS DEED OF PARTIAL RECONVEYANCE shall not constitute payment in full of all sums due and owing upon the indebtedness secured by this Deed of Trust nor shall this Deed of Partial Reconveyance be construed as a release of any such indebtedness or security interest in any other property securing such indebtedness nor a reconveyance of this Deed of Trust as to any other property described therein.

DATED THIS 11<sup>th</sup> day of July, 2005.

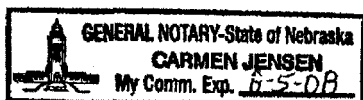
TierOne Bank, Trustee and Beneficiary

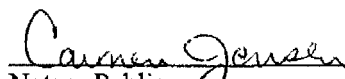
By:   
Delmar E. Williams, Senior Vice President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER    )

On this 11<sup>th</sup> day of July, 2005, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Delmar E. William, Senior Vice President of TierOne Bank, as Trustee and Beneficiary, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be the voluntary act and deed of said corporation as such Trustee and Beneficiary.

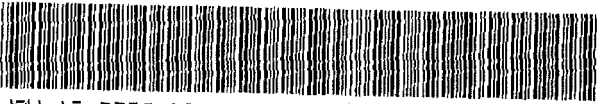
Witness my hand and notarial seal the day and year last above written.



  
Notary Public



REL 2006003678



JAN 12 2006 08:37 P 2

Prepared by: TierOne Bank, Carmen Jensen, PO Box 83009, Lincoln, NE 68501 - 402-479-0513

**DEED OF PARTIAL RECONVEYANCE**Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
1/12/2006 08:37:36.40

2006003678

KNOW ALL MEN BY THESE PRESENTS:

Loan No. 01-10168430

THAT WHEREAS, for good and valuable consideration received upon the Deed of Trust and Security Agreement executed by **Terra Pacific Omaha, LLC, a Nebraska limited liability company** to **TierOne Bank f/k/a First Federal Lincoln Bank**, Trustee and Beneficiary, dated October 29, 2001, and recorded November 7, 2001, as Instrument No. 2001-34125 in Book 6783, Pages 572-586, which was modified by that Loan Modification Agreement dated May 15, 2002, and recorded May 30, 2002 as Instrument No. 2002-12478 in Book 1442, Pages 312-316, which was further modified by that Second Loan Modification Agreement dated November 13, 2002, and recorded December 3, 2002 as Instrument No. 2002-29728 in Book 1477, Pages 620-626, which was further modified by that Third Loan Modification Agreement dated December 12, 2003, and recorded December 24, 2003 as Instrument No. 2003246331, which was further modified by that Fourth Loan Modification Agreement dated December 17, 2004, and recorded January 26, 2005 as Instrument No. 2005009253, which was further modified by that Assumption and Fifth Loan Modification Agreement dated June 22, 2005, and recorded July 22, 2005 as Instrument No. 2005087623, all in the office of the Register of Deeds of Douglas County, Nebraska, said Beneficiary does hereby request that this Deed of Partial Reconveyance be executed and delivered.

NOW THEREFORE, for such consideration and in accordance with the request of the Beneficiary, the undersigned Trustee does by these presents, grant, remise, release and reconvey to the persons entitled thereto all of the interest and estate derived to said Trustee by or through said Deed of Trust in the following described premises, but only as to said premises:

See attached Exhibit "A"

TOGETHER WITH ALL buildings, fixtures, improvements and appurtenances belonging to such premises.

THIS DEED OF PARTIAL RECONVEYANCE shall not constitute payment in full of all sums due and owing upon the indebtedness secured by this Deed of Trust nor shall this Deed of Partial Reconveyance be construed as a release of any such indebtedness or security interest in any other property securing such indebtedness nor a reconveyance of this Deed of Trust as to any other property described therein.

DATED THIS 9<sup>th</sup> day of January, 2006.TierOne Bank f/k/a First Federal Lincoln Bank,  
Trustee and BeneficiaryBy:   
Delmar E. Williams, Senior Vice PresidentSTATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

On this 9<sup>th</sup> day of January, 2006, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Delmar E. William, Senior Vice President of TierOne Bank f/k/a First Federal Lincoln Bank, as Trustee and Beneficiary, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be the voluntary act and deed of said corporation as such Trustee and Beneficiary.

  
Notary Public

12/13/06  
73-02712  
REL 7800 FB  
BKP C/J COMB MB  
DEL 1642791

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**OF PARTIAL RELEASE**

Lot 1, Belle Meade Replat 1, being replat of Lots 1 and 2, Belle Meade, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska

**NOW KNOWN AS:**

Units as listed below and Garages as listed below, in Belle Meade Condominium Property Regime, a condominium property regime organized and existing under the Laws of the State of Nebraska, in the City of Omaha, in Douglas County, Nebraska, pursuant to Master Deed filed August 11, 2005 at Instrument No. 2005-098692 in the office of the Register of Deeds, Douglas County, Nebraska and any amendments thereto.

**UNITS:**

1101, 1102, 1103, 1104, 1106, 1108, 1109, 1110, 1111, 1112, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 2101, 2102, 2103, 2104, 2105, 2107, 2109, 2110, 2111, 2112, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3301, 3302, 3303, 3304, 3305, 3306, 3307 and 3308

**GARAGES:**

Attached: 1A, 1B, 1E, 1F, 1K, 1L, 1N, 1O, 1P, 2A, 2B, 2E, 2F, 2K, 2L, 2M, 2O, 2P, 3A, 3B, 3E, 3F, 3I, 3J, 3L, 3M and 3N

Detached: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17



REL 2007113379



OCT 04 2007 13:26 P 1

Rel  
 5 FE 30.50 FB 78-02713  
 BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP 2  
 151 DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

*Not all units  
Partial*

Prepared by: TierOne Bank, Virginia Mattson, PO Box 83009, Lincoln, NE 68501 - 402-479-0544

**DEED OF RECONVEYANCE**

Loan No. 01-10174000 & 01-10203824

Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 10/4/2007 13:26:29.76  
  
 2007113379

KNOW ALL MEN BY THESE PRESENTS:

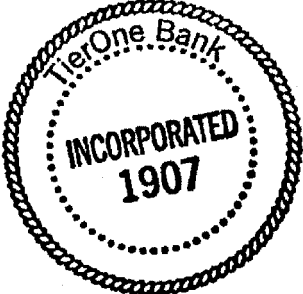
THAT WHEREAS, all of the indebtedness secured by the Deed of Trust executed by **Terra Pacific Omaha, LLC, a Nebraska limited liability company** to TierOne Bank, Trustee and Beneficiary, , dated November 13, 2002, and recorded December 3, 2002, in Book 7610, Pages 645-661, and Modification dated June 22, 2005, and recorded July 22, 2005 as Instrument No. 2005-087626, and Deed of Trust dated December 12, 2003, and recorded December 24, 2003 as Instrument No. 2003-246334 and Modification dated December 17, 2004, and recorded January 26, 2005 as Instrument No. 2005-009252, and Second Modification dated June 22 2005, recorded July 22, 2005, as Instrument No. 2005-087630, in the office of the Register of Deeds of Douglas County, Nebraska, has been paid, and said Beneficiary does hereby request that this Deed of Reconveyance be executed and delivered.

NOW, THEREFORE, in consideration of such payment and in accordance with the request of the Beneficiary, the undersigned Trustee does by these presents, grant, remise, release and reconvey to the persons entitled thereto all the interest and estate derived to said Trustee by or through said Deed of Trust in the following described premises, but only as to such premises:

Unit 1102, 1110, 1112, 1201, 1204, 1205, 1209, 1211, 1303, 1304, 1309, 2103, 2109, 2112, 2202, 2203, 2207, 2209, 2211, 2301, 2303, 2307, 2309, 2311, 3104, 3107, 3108, 3202, 3203, 3204, 3206, 3208, 3303, 3304, 3305, 3306, and 3308, AND Garage Units 8, 12, 13, 20, 21, 23, 24, 27, 35, 37, 38, 40, 41, and 42, in Belle Meade Condominiums, a condominium property regime organized under the laws of the State of Nebraska, in the City of Omaha, in Douglas County, Nebraska, pursuant to Condominium Declaration filed August 11, 2005 at Instrument No. 2005-098692, and First Amendment To Condominium Declaration filed January 20, 2006 at Instrument No. 2006-007070 of the records of Douglas County, Nebraska.

TOGETHER WITH ALL buildings, fixtures, improvements and appurtenances belonging to such premises.

DATED THIS 29<sup>th</sup> day of August, 2007.



TierOne Bank, Trustee and Beneficiary  
 By: *LoisAnn Hinrichs*  
 LoisAnn Hinrichs, First Vice President

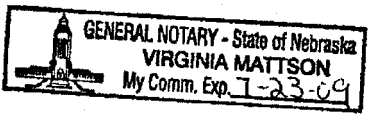
STATE OF NEBRASKA     )  
                                       ) ss.  
 COUNTY OF LANCASTER )

On this 29<sup>th</sup> day of August, 2007, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came LoisAnn Hinrichs, First Vice President of TierOne Bank, as Trustee and Beneficiary, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be the voluntary act and deed of said corporation as such Trustee and Beneficiary.

Witness my hand and notarial seal the day and year last above written.

My Commission Expires:  
July 23, 2009

*Virginia Mattson* Notary Public  
 Virginia Mattson

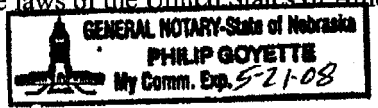


16

T-File

STATE OF NEBRASKA           )  
  ) ss.  
COUNTY OF LANCASTER       )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of ~~December, 2004~~ <sup>January, 2005</sup>, by Delmar E. Williams, Senior Vice President of TierOne Bank, a corporation organized and existing under the laws of the United States of America, on behalf of said corporation.



Philip Goyette  
Notary Public

My commission expires: May 21, 2008

STATE OF NORTH DAKOTA    )  
  ) ss  
COUNTY OF CASS            )

On this 27<sup>th</sup> day of December, 2004, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren Gunderson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.

Kevin Anderson  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06

NOTARIAL SEAL  
REGISTER OF DEEDS

**NOTARIAL SEAL  
REGISTER OF DEEDS**

STATE OF NORTH DAKOTA    )  
  ) ss  
COUNTY OF CASS            )

On this 27<sup>th</sup> day of December, 2004, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Gene Gallagher, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.

Kevin Anderson  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06

NOTARIAL SEAL  
REGISTER OF DEEDS


**NOTARIAL SEAL  
REGISTER OF DEEDS**



**ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTORS**

The undersigned hereby acknowledge receipt of a copy of the foregoing Loan Modification Agreement, and consent to the modification of the Loan, and the other terms hereof. Further the undersigned reaffirm the terms and conditions of their Repayment Guaranty agreements as executed in connection with that Note Secured by Deed of Trust dated December 12, 2003, ("Note") and that Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated December 12, 2003 ("Deed of Trust"), and agree to be bound thereby as to the indebtedness thereunder or hereunder or under the Note and Deed of Trust as amended and we hereby waive and release any and all claims and defenses we might otherwise have as to our liability thereunder arising by reason of this Loan Modification Agreement or any act or omission occurring prior to the date hereof.

**GUARANTORS:**

  
Loren W. Gunderson

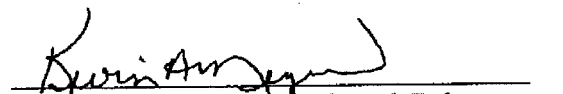
  
Eugene P. Gallagher

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF CASS            )

On this 27<sup>th</sup> day of December, 2004, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren W. Gunderson, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.

**NOTARIAL SEAL  
REGISTER OF DEEDS**

  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06


NOTARIAL SEAL  
REGISTER OF DEEDS

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF CASS            )

On this 27<sup>th</sup> day of December, 2004, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Eugene P. Gallagher, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.

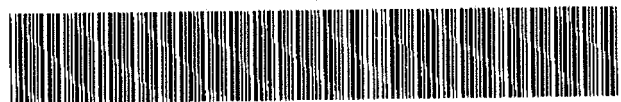
**NOTARIAL SEAL  
REGISTER OF DEEDS**

  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06

NOTARIAL SEAL  
REGISTER OF DEEDS



MISC 2005087630



JUL 22 2005 07:48 P 5

which recorded return to:  
TierOne Bank  
Attn: Credit Administration  
1235 "N" Street  
Lincoln, NE 68508

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/22/2005 07:48:21.92  
  
2005087630

## SECOND LOAN MODIFICATION AGREEMENT

Loan No. 01-10203824

This Second Loan Modification Agreement made as of June 22, 2005, is by and between **Terra Pacific Omaha, LLC, a Nebraska limited liability company**, herein referred to as "Borrower", whose mailing address is c/o Jason Gunderson, 14725 Bedford Plaza, Omaha, Nebraska 68116, and **TierOne Bank**, a federally chartered savings bank, herein referred to as ("Lender"), whose mailing address is 1235 "N" Street, Lincoln, Nebraska 68508 (Collectively the "Parties").

### WITNESSETH

WHEREAS, Borrower is indebted to Lender upon that certain Note Secured by Construction Security Agreement dated December 12, 2003, made by Borrower in the original amount of \$575,000.00 (the "Note") secured among other things, by a Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement of the same date (the "Security Instrument") which was recorded December 24, 2003, as Instrument No. 2003246334 in the office of the Register of Deeds of Douglas County, Nebraska, UCC-1 Financing Statements and other security instruments, encumbering the property described as follows (the "Property"):

Lot 1, in Belle Meade, an Addition to the City of Omaha, as surveyed,  
platted and recorded in Douglas County, Nebraska.

WHEREAS, Loren Gunderson and Gene Gallagher (herein "Guarantors") executed Guaranty agreements dated December 12, 2003, guaranteeing Borrower's full and punctual performance under the Note and Security Instrument.

WHEREAS, Lender is the owner and holder of a Loan Modification Agreement dated December 17, 2004, recorded on January 26, 2005, as Instrument No. 2005009252 in the office of the Register of Deeds of Douglas County, Nebraska ("First Loan Modification Agreement").

WHEREAS, the Note, Security Instrument, Guaranty agreements, First Loan Modification Agreement, and all other documents executed in connection with the loan are collectively referred to herein as the "Existing Loan Documents".

WHEREAS, Lender and Borrower hereby agree to modify certain terms of the Note and Security Instrument as set forth below.

NOW, THEREFORE, in consideration of Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower and Guarantors hereto agree, represent and consent to and with Lender as follows:

- A. Borrower shall execute that certain Replacement Note Secured by Construction Security Agreement of even date herewith and identified in Paragraph C.1 of this Second Loan Modification Agreement.
- B. Borrower shall pay any closing and recording costs and shall provide and pay the cost of appropriate title endorsement(s) to the original ALTA Loan Policy to Title Insurance, Policy No. MM 5373403, dated December 24, 2003, issued by Old Republic National Title Insurance Company to Lender, insuring that Lender's Security Instrument remains, subsequent to the recording of this Second Loan Modification Agreement, a second lien on the Property.

*min*  
*5*  
*1*  
25<sup>50</sup> 73-02710  
\_\_\_\_ FB \_\_\_\_  
\_\_\_\_ C/O \_\_\_\_ COMP *MB*  
\_\_\_\_ SCAN \_\_\_\_ FV \_\_\_\_

4 NLTA  
26979

C. Subject to receipt of this Second Loan Modification Agreement, fully executed, and items "A" and "B" above, the Parties agree to amend and modify the terms and conditions of the Security Instrument as follows:

1. The "Note" identified in the fifth paragraph on Page 1 of the Security Instrument shall be that certain Replacement Note Secured by Construction Security Agreement dated June 22, 2005, in the Principal sum of Five Hundred Seventy Four Thousand Nine Hundred Ninety One and 68/100 Dollars (\$574,991.68) with a Maturity Date of November 1, 2008, which certain Replacement Note Secured by Construction Security Agreement is a modification of and substitution for the Note Secured by Construction Security Agreement dated December 12, 2003. The Replacement Note Secured by Construction Security Agreement dated June 22, 2005, evidences the Principal balance due and owing on the Note dated December 12, 2003;
2. The "Maturity Date" referenced in the fifth paragraph on Page 1 of the Security Instrument as modified by that First Loan Modification Agreement is hereby changed to **November 1, 2008**.
3. Paragraph 35 on Page 11 of the Security Instrument is hereby deleted in its entirety and the following substituted therefore:

35. CROSS DEFAULT PROVISION. In addition to the indebtedness evidenced by the Note and secured by this Security Instrument, Borrower has also obtained from Lender a loan evidenced by a Note Secured by Construction Security Agreement dated November 13, 2002 in the principal amount of \$6,500,000.00 and secured by a Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated November 13, 2002 and recorded on December 3, 2002 in Book 7610 at Page 645 in the Register of Deeds office of Douglas County, Nebraska. Borrower hereby agrees that any default or event of default under the terms and conditions of the foregoing note, deed of trust or any other security instrument evidencing or securing said loan, shall constitute a default or event of default under the Note and this Security Instrument, and upon such occurrence, Lender may exercise, at its sole option, any of the rights or remedies contained in the note, this Security Instrument or any other loan document evidencing or securing the indebtedness secured hereby, subject only to the expiration of any notice and/or grace period therein provided.

4. Paragraph 36 (b) on Page 12 of the Security Instrument is hereby deleted in its entirety.
5. Paragraph 37 is hereby added to the Security Instrument:

37. PARTIAL RELEASE PROVISION. Provided no default or Event of Default shall then exist under the Note or this Security Instrument, Lender agrees to cause Trustee to partially reconvey this Security Instrument as to any individual unit or units hereafter created or platted ("Unit") constituting the Property described on Exhibit "A" attached hereto, subject to the following terms and conditions:

- (a) All requests for partial reconveyances shall be made in writing directed to Lender, TierOne Bank, c/o Credit Administration Department, 1235 N Street, Lincoln, NE 68508; and
- (b) With respect to each Unit sold, Borrower shall pay to Lender, 100% of the net sale proceeds for each Unit; and
- (c) All amounts paid to Lender in connection with each partial deed of reconveyance, pursuant to this Paragraph 37, shall be first applied towards a Principal reduction on the Note evidenced as Loan No. 01-10203824. Any remaining release amounts shall be applied as a Principal reduction on the Note evidenced as Loan No. 01-10174000. Such release amounts shall not delay or otherwise extend the date of payment of (or be applied against) any Interest amounts due under the Notes; and


- (d) All partial reconveyances shall be made without warranty and neither Lender nor Trustee shall be responsible for any recording fees in connection therewith.

D. Except as expressly modified by the terms hereof, all of the terms and provisions of the Security Instrument, and all other loan documents evidencing or securing said indebtedness, are hereby ratified and shall remain in full force and effect. By execution hereof, Borrower and Lender concur with all provisions contained in this Second Loan Modification Agreement.

**A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU AND US FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.**

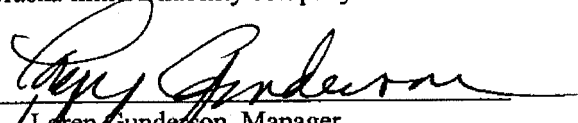
**LENDER:**

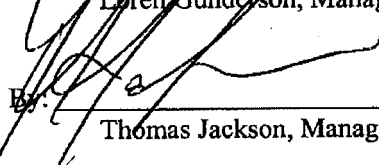
TierOne Bank

By:   
 Delmar Williams  
 Senior Vice President

**BORROWER:**

Terra Pacific Omaha, LLC,  
 a Nebraska limited liability company

By:   
 Loren Gunderson, Manager

By:   
 Thomas Jackson, Manager

STATE OF NEBRASKA       )  
                                       ) ss.  
 COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of <sup>July</sup>~~June~~, 2005, by Delmar Williams, a Senior Vice President of TierOne Bank, a federally chartered savings bank, on behalf of said bank.



Carmen Jensen  
 Notary Public

My Commission Expires: 8-5-08

STATE OF NORTH DAKOTA    )  
                                       ) ss.  
 COUNTY OF CASS            )

On this 20<sup>th</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren Gunderson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person executed the instrument as the voluntary act and deed on behalf of the company.

Witness my hand and notarial seal in said county the date last above written.

NOTARIAL SEAL  
 REGISTER OF DEEDS

NOTARIAL SEAL  
 REGISTER OF DEEDS

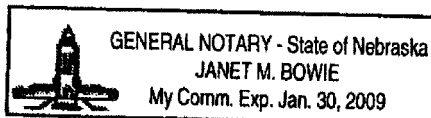
Karin Amundson  
 Notary Public in the State of North Dakota  
 My Commission Expires: 7-21-06

STATE OF NEBRASKA       )  
                                       ) ss.  
 COUNTY OF <sup>Douglas</sup>~~LANCASTER~~    )

The foregoing instrument was acknowledged before me this 6 day of <sup>July</sup>~~June~~, 2005, by Thomas Jackson, a Manager of Terra Pacific Omaha, LLC, a Nebraska limited liability company, on behalf of the company.

Janet M. Bowie  
 Notary Public


My Commission Expires: 1-30-09

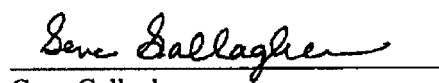


# ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTORS

The undersigned hereby acknowledge receipt of a copy of the foregoing Second Loan Modification Agreement, and consent to the modification of the Security Instrument, and the other terms hereof. Further the undersigned reaffirm the terms and conditions of our Guaranty agreements as executed in connection with that Note Secured by Construction Security Agreement dated December 12, 2003 and the Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement dated December 12, 2003 ("Security Instrument"), and agree to be bound thereby as to the indebtedness thereunder or hereunder or under the Note Secured by Construction Security Agreement and Security Instrument and we hereby waive and release any and all claims and defenses we might otherwise have as to our liability thereunder arising by reason of this Second Loan Modification Agreement or any act or omission occurring prior to the date hereof.

## GUARANTORS:

  
Loren Gunderson

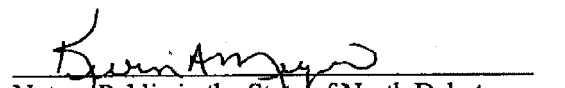
  
Gene Gallagher

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF CASS            )

On this 21<sup>st</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Loren Gunderson, an individual known unto me.

Witness my hand and notarial seal in said county the date last above written.

NOTARIAL SEAL  
REGISTER OF DEEDS

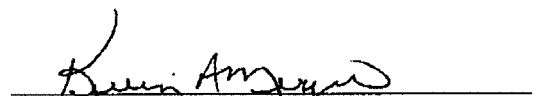
  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06

STATE OF NORTH DAKOTA     )  
  ) ss  
COUNTY OF CASS            )

On this 21<sup>st</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for the State of North Dakota, personally appeared Gene Gallagher, an individual known unto me.

Witness my hand and notarial seal in said county the date last above written.

NOTARIAL SEAL  
REGISTER OF DEEDS

  
Notary Public in the State of North Dakota  
My Commission Expires: 7-21-06



REL 2005087631



JUL 22 2005 07:48 P 2

*Rel. of Lot 2 only  
that didn't  
affect Condo.*

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/22/2005 07:48:23.19  
  
2005087631

**THIS PAGE INCLUDED FOR INDEXING**  
**PAGE DOWN FOR BALANCE OF INSTRUMENT**

*Rel 1*  
*2*  
*1*

FEE	<u>10<sup>50</sup></u>	FB	<u>73-02710</u>
BKP	<u>          </u>	C/O	<u>          </u> <i>mb</i>
DEL	<u>          </u>	SCAN	<u>          </u> FV <u>          </u>

Prepared by: TierOne Bank, Carmen Jensen, PO Box 83009, Lincoln, NE 68501 - 402-479-0513

**DEED OF PARTIAL RECONVEYANCE**

**Loan No. 01-10203824**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, for good and valuable consideration received upon the Construction Security Agreement/Deed of Trust with Assignment of Rents and Security Agreement executed by **Terra Pacific Omaha, LLC, a Nebraska limited liability company**, Trustor to **TierOne Bank**, Trustee and Beneficiary, dated December 12, 2003, and recorded December 24, 2003, as Instrument No. 2003246334, which was modified by that Loan Modification Agreement dated December 17, 2004, and recorded January 26, 2005, as Instrument No. 2005009252, all in the office of the Register of Deeds of Douglas County, Nebraska, said Beneficiary does hereby request that this Deed of Partial Reconveyance be executed and delivered.

NOW THEREFORE, for such consideration and in accordance with the request of the Beneficiary, the undersigned Trustee does by these presents, grant, remise, release and reconvey to the persons entitled thereto all of the interest and estate derived to said Trustee by or through said Deed of Trust in the following described premises, but only as to said premises:

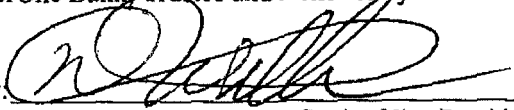
Lot 2, in Belle Meade, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

TOGETHER WITH ALL buildings, fixtures, improvements and appurtenances belonging to such premises.

THIS DEED OF PARTIAL RECONVEYANCE shall not constitute payment in full of all sums due and owing upon the indebtedness secured by this Deed of Trust nor shall this Deed of Partial Reconveyance be construed as a release of any such indebtedness or security interest in any other property securing such indebtedness nor a reconveyance of this Deed of Trust as to any other property described therein.

DATED THIS 11<sup>th</sup> day of July, 2005.

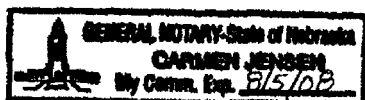
TierOne Bank, Trustee and Beneficiary

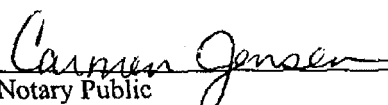
By:   
Delmar E. Williams, Senior Vice President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER    )

On this 11<sup>th</sup> day of July, 2005, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Delmar E. William, Senior Vice President of TierOne Bank, as Trustee and Beneficiary, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be the voluntary act and deed of said corporation as such Trustee and Beneficiary.

Witness my hand and notarial seal the day and year last above written.



  
Carmen Jensen  
Notary Public

4 NLTA

26979



Prepared by: Carmen Jensen, TierOne Bank, PO Box 83009, Lincoln, NE 68501 – (402) 479-0513

**PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS**

**Loan No. 01-10174000**

IN CONSIDERATION of partial payment of the debt named therein, the undersigned TierOne Bank, hereby partially releases the Assignment of Leases and Rents dated November 13, 2002, made by and between **Terra Pacific Omaha, LLC, a Nebraska limited liability company** ("Borrower") and **TierOne Bank** ("Lender") on the following described property:

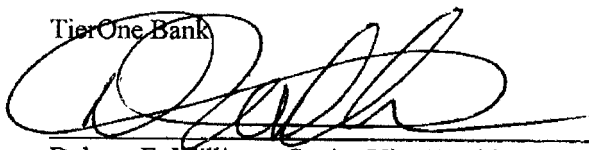
Lot 2, in Belle Meade, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

RESERVING, HOWEVER, IT'S FIRST LIEN RIGHTS ON THE REMAINING PROPERTY.

which was recorded December 3, 2002 as Instrument No. 2002-29719, in Book 1477, Pages 597-609 in the office of the Register of Deeds of Douglas County, Nebraska.

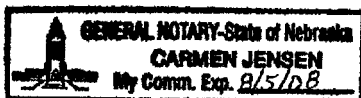
IN TESTIMONY WHEREOF, the said TierOne Bank has caused these presents to be executed by its Senior Vice President.

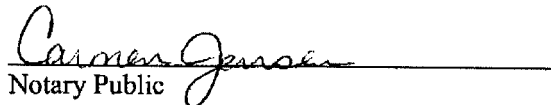
Dated: July 11, 2005

TierOne Bank  
  
 Delmar E. Williams, Senior Vice President

STATE OF NEBRASKA     )  
                                       ) ss.  
 COUNTY OF LANCASTER    )

On this 11th day of July, 2005, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Delmar E. William, Senior Vice President of TierOne Bank, as Trustee and Beneficiary, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be the voluntary act and deed of said corporation as such Trustee and Beneficiary.



  
 Notary Public



REL 2005087628



JUL 22 2005 07:47 P 2

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/22/2005 07:47:27.19



2005087628

**THIS PAGE INCLUDED FOR INDEXING**  
**PAGE DOWN FOR BALANCE OF INSTRUMENT**

5  
REL  
2/1  
FEE 10<sup>50</sup> FB 73-02710  
BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP JVD  
DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_