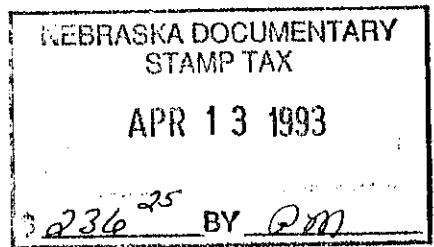


# 237



COMPARED

FILED APR 13 1993 AT 10:30 A.M.  
 BOOK 155 OF Deed PAGE 109  
 REGISTER OF DEEDS, CASS CO., NE Patricia M. ...  
 Doc # 237 \$27.00

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: THAT BELLEVUE ANIMAL HOSPITAL, A NEBRASKA CORPORATION, herein called the grantor whether one or more, in consideration of One Dollar and other good and valuable consideration received from grantee, does hereby grant, bargain, sell, convey and confirm unto JAMES E. and INEZ M. BOYD Husband and Wife, as Joint Tenants with Right of Survivorship and not as Tenants in Common, herein called the grantee whether one or more, the following described real property in Cass County, Nebraska:

See Exhibit A attached

To have and to hold the above described premises together with all tenements, hereditaments and appurtenances thereto belonging unto the grantee and to grantee's heirs and assigns forever.

And the grantor does hereby covenant with the grantee and with grantee's heirs and assigns that grantor is lawfully seised of said premises; that they are free from encumbrance, except restrictions, easements and covenants of record; that grantor has good right and lawful authority to convey the same; and that grantor warrants and will defend the title to said premises against the lawful claims of all persons whomsoever.

It is the intention of all parties hereto that in the event of the death of either of the grantees, the entire fee simple title to the real estate shall vest in the surviving grantee.

In witness whereof, grantor has hereunto caused its corporate seal to be affixed and these presents signed by its President.

Dated April 13, 1993.

BELLEVUE ANIMAL HOSPITAL, Grantor

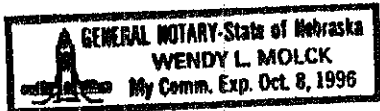
James E. Boyd  
 JAMES E. BOYD, President

STATE OF NEBRASKA     )  
                                   ) ss.  
 COUNTY OF SARPY        )

On this 13th day of April, 1993 before me, the undersigned, a Notary Public in and for said County personally came James E. Boyd, President of Bellevue Animal Hospital (a corporation) to me personally known to the President and the identical person whose name is affixed to the above conveyance, and acknowledged the

execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that the Corporate seal of the said corporation was thereto affixed by its authority.

Witness my hand and Notarial Seal at Bellevue in said county the day and year last above written.



Wendy L. Molck  
Notary Public

Part of the SW1/4 of Section 32-T13N-R13E of the 6th P.M., Cass County, Nebraska, lying South of the centerline of the Platte River and West of Buccaneer Bay, a subdivision located in said Section 32-T13N-R13E of the 6th P.M., and the N1/2 of Section 5-T12N-R13E of the 6th P.M., and part of the SE1/4 of Section 31-T13N-R13E of the 6th P.M., lying South of said centerline of the Platte River; and part of the NW1/4 of said Section 5-T12N-R13E of the 6th P.M., lying West of said Buccaneer Bay; and part of the W1/2 of the NE1/4 of said Section 5, T12N-R13E of the 6th P.M., lying West of said Buccaneer Bay; and part of the North 1/2 of the SW1/4 of Section 5-T12N-R13E of the 6th P.M., lying North of the County Road; and the NE1/4 of the NE1/4 and part of Government Lot 5, in the NW1/4 of the NE1/4 of Section 6-T12N-R13E of the 6th P.M., lying East of the Northeastly right-of-way line of County Road No. 130; all located in Cass County, Nebraska, more particularly described as follows:

Beginning at the Southeast corner of the SW1/4 of the NE1/4 of said Section 5; thence S 89°25'39" W (Assumed Bearing), along the South line of said SW1/4 of the NE1/4 of Section 5, a distance of 1320.81 feet to the Southwest corner of said NE1/4 of Section 5; thence S 89°25'03" W, along the South line of the NW1/4 of said Section 5, a distance of 535.98 feet to the SE Corner of Tax Lot 15; thence N 0°34'33" W, along the East line of Tax Lot 15, 934.42 feet to the NE Corner of Tax Lot 15; thence S 89°25'39" W, along the North line of Tax Lots 14 and 15, 1445.12 feet to the NW Corner of Tax Lot 14; thence S 37°59'21" E, 669.09 feet; thence S 27°13'01" E, 284.05 feet; thence S 17°32'51" E, 155.91 feet to a point on the South line of the NW1/4 of said Section 5; thence S 89°25'03" W, along said South line, 11.99 feet, to a point on the North right-of-way line of a county road; thence along said North right-of-way line of a county road, on the following described courses; thence Southwesterly on a curve to the left with a radius of 173.26 feet, a distance of 139.30 feet, said curve having a long chord which bears S 30°26'02" W, a distance of 135.58 feet; thence S 07°24'00" W, a distance of 114.00 feet; thence Westerly on a curve to the right with a radius of 103.90 feet, a distance of 149.55 feet, said curve having a long chord that bears S 48°38'11" W, a distance of 136.97 feet; thence S 89°52'22" W, a distance of 493.08 feet to the SE Corner of Tax Lot 12; thence N 0°14'39" W, along the East line of Tax Lot 12, 789.77' to the NE Corner of Tax Lot 12; thence S 89°25'03" W, along the North line of Tax Lot 12, 551.95' to a point on the West line of the NW 1/4 of said Section 5; thence N 00°14'57" W, along the West line of said NW1/4 of Section 5, a distance of 878.89 feet to the Northwest corner of the SW1/4 of the NW1/4 of said Section 5; thence S 89°05'17" W, along the South line of the N1/2 of the NE1/4 of said Section 6, a distance of 1523.94 feet to a point on said Northeastly right-of-way line of County Road No. 130; thence along said Northeastly right-of-way line of County Road No. 130, on the following described courses; thence N 48°06'46" W, a distance of 538.50 feet; thence Northwesterly on a curve to the right with a radius of 160.02 feet, a distance of 49.34 feet, said curve having a long chord which bears N 39°16'44" W, a distance of 49.15 feet; thence N 30°26'42" W, a distance of 125.56 feet; thence Northwesterly on a curve to the left with a radius of 270.36 feet, a distance of 155.06 feet, said curve having a long chord which bears N 46°52'32" W, a distance of 152.95 feet; thence N 63°18'22" W, a distance of 204.74 feet to a point on the West line of said government Lot 5; thence N 00°03'25" W, along said West line of government Lot 5, a distance of 532.65 feet, to a point on the North line of said NE1/4 of Section 6; thence S 89°59'43" E, along said North line of the NE1/4 of Section 6, a distance of 435.11 feet to the Southwest corner of the SE1/4 of said Section 31; thence N 00°02'37" W, along the West line of said SE1/4 of Section 31, a distance of 22.19 feet; thence N 76°17'45" E, a distance of 179.08 feet; thence N 70°46'32" E, a distance of 590.72 feet; thence N 55°38'59" E, a distance of 1098.81 feet; thence N 46°45'10" E, a distance of 591.56 feet; thence N 22°32'58" E, a distance of 225.74 feet to a point on the Southerly right-of-way line of the Burlington Northern Railroad (formerly the Chicago, Burlington and Quincy Railroad); thence along the Southerly right-of-way line of the Burlington Northern Railroad on the following described courses; thence Northeastly on a curve to the left with a radius of 2359.22 feet, a distance of 477.76 feet, said curve having a long chord that bears N 86°32'55" E, a distance of 476.95 feet; thence S 00°16'12" E, a distance of 75.90 feet; thence Northeastly on a curve to the left with a radius of 2434.22 feet, a distance of 608.09 feet, said curve having a long chord which bears N 73°52'10" E, a distance of 606.51 feet; thence Northeastly on a curve to the left with a radius of 3195.74 feet, a distance of 139.91 feet, said curve having a long chord which bears N 65°27'32" E, a distance of 139.89 feet; thence N 64°12'17" E, a distance of 849.60 feet; thence N 25°47'43" W, a distance of 50.00 feet; thence N 64°12'17" E, a distance of 60.90 feet; thence Northeastly on a curve to the left with a radius of 5281.16 feet, a distance of 89.10 feet, said curve having a long chord which bears N 61°43'17" E,

## ATTACHMENT "A"

page 2 of 3

a distance of 89.10 feet; thence Northeasterly on a curve to the left with a radius of 3919.72 feet, a distance of 130.00 feet, said curve having a long chord which bears N 62°17'17" E, a distance of 129.99 feet; thence S 28°39'44" E, a distance of 50.00 feet; thence Northeasterly on a curve to the left with a radius of 3969.72 feet, a distance of 95.25 feet, said curve having a long chord which bears N 60°39'02" E, a distance of 95.25 feet; thence Northeasterly on a curve to the left with a radius of 5331.16 feet, a distance of 89.94 feet, said curve having a long chord which bears N 59°28'47" E, a distance of 89.94 feet; thence N 58°59'47" E, a distance of 738.63 feet to a point on the North line of the SW1/4 of Section 32; thence N 89°56'44" E, along said North line of the SW1/4 of Section 32, a distance of 111.96 feet to the Northeast corner of said SW1/4 of Section 32; thence S 00°09'45" E, along the East line of said SW1/4 of Section 32, a distance of 232.51 feet to a point on the Northwestern line of Lot 27, Block 15, Buccaneer Bay; thence along said Westerly line of Block 15, Buccaneer Bay on the following described courses: Thence S 53°10'00" W, a distance of 150.36 feet; thence S 55°36'49" W, a distance of 294.57 feet; thence S 41°05'07" W, a distance of 224.61 feet; thence S 15°50'56" W, a distance of 592.86 feet; thence S 04°55'01" W, a distance of 186.29 feet; thence S 01°31'27" W, a distance of 223.64 feet; thence S 21°20'56" E, a distance of 96.98 feet; thence S 19°49'53" W, a distance of 104.99 feet; thence S 27°57'19" E, a distance of 67.50 feet; thence S 09°12'08" W, a distance of 139.57 feet; thence S 26°42'52" E, a distance of 338.27 feet; thence S 51°13'01" E, a distance of 80.52 feet to the Southwest corner of Lot 1, Block 15, Buccaneer Bay; thence S 21°27'34" W, a distance of 12.57 feet to the Northeast corner of Lot 9, Block 14, Buccaneer Bay; thence along the Northerly and Westerly line of Block 14, Buccaneer Bay on the following described courses; thence N 79°42'22" W, a distance of 115.75 feet; thence S 51°15'43" W, a distance of 215.11 feet; thence S 21°18'20" W, a distance of 212.97 feet; thence S 10°15'00" W, a distance of 75.07 feet; thence S 01°27'00" W, a distance of 258.04 feet to the Southwest Corner of Lot 1, Block 14, Buccaneer Bay; thence S 79°45'03" E, along the South line of said Lot 1, Block 14, Buccaneer Bay, a distance of 110.53 feet to the Southeast corner of said Lot 1, Block 14, Buccaneer Bay, said point also being on the Westerly right-of-way line of Buccaneer Boulevard; thence S 10°14'57" W, along said Westerly right-of-way line of Buccaneer Boulevard, a distance of 111.77 feet; thence Southwesterly along said Westerly right-of-way line of Buccaneer Boulevard on a curve to the left with a radius of 771.73 feet, a distance of 68.24 feet, said curve having a long chord which bears S 07°42'59" W, a distance of 68.21 feet to the Point of Intersection of the Westerly right-of-way line of Buccaneer Boulevard and the Westerly extension of the Southerly right-of-way line of Blackbeard Drive; thence S 82°57'37" E, along said Southerly right-of-way line of Blackbeard Drive and the Westerly extension, thereof, a distance of 209.02 feet to the Northwest corner of Lot 48, Block 11, Buccaneer Bay; thence along the Westerly and Southerly line of said Block 11, Buccaneer Bay on the following described courses; thence S 07°02'23" W, a distance of 140.00 feet; thence S 81°52'21" E, a distance of 216.34 feet; thence S 09°49'51" E, a distance of 153.09 feet; thence S 06°30'00" E, a distance of 975.00 feet; thence S 14°17'10" E, a distance of 200.34 feet; thence S 43°38'44" E, a distance of 217.58 feet; thence S 75°25'33" E, a distance of 231.41 feet; thence N 75°49'02" E, a distance of 207.38 feet; thence N 63°52'39" E, a distance of 217.27 feet to a point on the East line of the SW1/4 of the NE1/4 of said Section 5; thence S 00°00'25" W, along said East line of the SW1/4 of the NE1/4 of Section 5, a distance of 358.99 feet to the Point of Beginning.

Said tract of land contains an area of 344.369 acres, more or less.

.....and also the following tract of land.....

A tract of land located in the SE1/4 of Section 31, Township 13 North, Range 13 East of the 6th P.M., lying South of the Centerline of the Platte River and North of the North right-of-way line of the Burlington Northern Railroad (formerly Chicago, Burlington and Quincy Railroad); and a tract of land located in the SW1/4 of Section 32, Township 13 North, Range 13 East of the 6th P.M., lying south of the centerline of the Platte River and North of the North right-of-way line of the Burlington Northern Railroad (formerly Chicago, Burlington and Quincy Railroad), all located in Cass County, Nebraska, said tracts of land more particularly described as follows:

Commencing at the Northeast corner of said SW1/4 of Section 32; thence S 89°56'44" W (Assumed Bearing) along the North line of said SW1/4 of Section 32, a distance of 500.85 feet to a point on said North right-of-way line of the Burlington Northern Railroad, said point also being the Point of Beginning; thence along said North right-of-way line of the Burlington Northern Railroad, on the following described courses: Thence S 58°59'47" W, a distance of 405.10 feet; thence Southwesterly on a curve to the right with a radius of 5131.16 feet, a distance of 86.57 feet, said curve having a long Chord which bears S 59°28'47" W, a distance of 86.57 feet; thence Southwesterly on a curve to the right with a radius of 3769.72 feet, a distance of 215.48 feet, said curve having a long chord which bears S 61°36'02" W, a distance of 215.45 feet; thence Southwesterly on a curve to the right with a radius of 5131.16 feet, a distance of 86.57 feet, said curve having a long chord which bears S 63°43'17" W, a distance of 86.57 feet; thence S 64°12'17" W, a distance of 910.50 feet; thence Southwesterly on a curve to the right with a radius of 2995.74 feet, a distance of 131.15 feet, said curve having a long chord which bears S 65°27'32" W, a distance of 131.14 feet; thence Southwesterly on a curve to the right with a radius of 2234.22 feet, a distance of 527.47 feet, said curve having a long chord which bears S 73°28'35" W, a distance of 526.24 feet to a point on the West line of said Section 32; thence N 00°16'12" W, along said West line of Section 32, a distance of 25.35 feet to a point on said North right-of-way line of the Burlington Northern Railroad; thence Westerly, along

said North right-of-way line of the Burlington Northern Railroad, on a curve to the right with a radius of 2209.22 feet, a distance of 471.12 feet, said curve having a long chord which bears S 86°14'27" W, a distance of 470.23 feet, thence N 04°17'20" E, a distance of 788.91 feet to a point on said centerline of the Platte River; thence Northeasterly along said centerline of the Platte River on a curve to the left with a radius of 4247.80 feet, a distance of 1702.44 feet, said curve having a long chord which bears N 82°48'26" E, a distance of 1691.07 feet to a point on said North line of the SW1/4 of Section 32; thence N 89°56'44" E, along said North line of the SW1/4 of Section 32, a distance of 865.10 feet to the Point of beginning

Said tract of land contains an area of 30.909 acres, more or less

.....and except for the following tract of land.....

A tract of land located in the SW1/4 of the NE1/4 of Section 5, Township 12 North, Range 13 East of the 6th P.M., Cass County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of said NE1/4 of Section 5; thence N 00°05'41" W (assumed bearing), along the West line of said NE1/4 of Section 5, a distance of 342.43 feet; thence N 89°54'19" E, a distance of 53.79 feet to the Point of Beginning; thence N 16°00'08" W, a distance of 65.17 feet; thence N 26°17'19" W, a distance of 65.17 feet; thence N 58°34'05" E, a distance of 150.00 feet; thence Southerly on a curve to the right with a radius of 513.50 feet, a distance of 184.38 feet, said curve having a long chord which bears S 21°08'44" E, a distance of 183.39 feet; thence S 79°08'28" W, a distance of 150.00 feet to the Point of Beginning

Said tract of land contains an area of 0.545 acres, more or less.

.....and except for the following described tract of land.....  
INGRESS and EGRESS EASEMENT

A tract of land located in the N1/2 of Section 5, Township 12 North, Range 13 East of the 6th P.M., Cass County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of the NE1/4 of said Section 5; thence N 89°25'39" E (assumed bearing) along the South line of said NE1/4 of Section 5, a distance of 212.49 feet to the Point of Beginning; thence N 00°34'21" W, a distance of 277.06 feet; thence Northwesterly on a curve to the left with a radius of 513.50 feet, a distance of 276.57 feet, said curve having a long chord which bears N 16°00'08" W, a distance of 273.24 feet; thence Northwesterly on a curve to the right with a radius of 586.70 feet, a distance of 269.69 feet, said curve having a long chord which bears N 18°15'49" W, a distance of 267.32 feet; thence N 05°05'40" W, a distance of 1020.36 feet; thence Northeasterly on a curve to the right with a radius of 771.73 feet, a distance of 138.43 feet, said curve having a long chord which bears N 00°02'40" E, a distance of 138.25 feet to a point on the Westerly right-of-way line of Buccaneer Boulevard; thence S 82°57'37" E along the Westerly extension of the Southerly right-of-way line of Blackbeard Drive, a distance of 60.03 feet to the point of intersection of said Southerly right-of-way line of Blackbeard Drive and the Easterly right-of-way line of Buccaneer Boulevard; thence Southeasterly on a curve to the left with a radius of 711.73 feet, a distance of 125.73 feet, said curve having a long chord which bears S 00°02'02" E, a distance of 125.56 feet; thence S 05°05'40" E, a distance of 1020.36 feet; thence Southeasterly on a curve to the left with a radius of 526.70 feet, a distance of 242.11 feet, said curve having a long chord which bears S 18°15'49" E, a distance of 239.99 feet; thence Southeasterly on a curve to the right with a radius of 573.50 feet, a distance of 308.89 feet, said curve having a long chord which bears S 16°00'08" E, a distance of 305.17 feet; thence S 00°34'21" E, a distance of 277.06 feet to a point on said South line of the NE1/4 of Section 5; thence S 89°25'39" W, along said South line of the NE1/4 of Section 5, a distance of 60.00 feet to the Point of Beginning.

Said tract of land contains an area of 2.725 Acres, more or less.

#4488

FILED  
CASS COUNTY, NE.

2007 JUL 27 AM 10:38

BK 559 OF mtg PG 472

David Johnson  
REGISTER OF DEEDS

Doc# 4488 \$185.50

**DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS  
(Bay Hills)**

**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.**

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 19th day of July, 2007, among Bay Hills Limited Partnership, a Nebraska limited partnership, as Trustor, First National Bank of Omaha, a national banking association, as Trustee, and First National Bank of Omaha, a national banking association, as Beneficiary:

**WITNESSETH:**

That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, the following described real estate (the "Real Estate"):

The real estate in Cass County, Nebraska, legally described on Exhibit "A" attached hereto and by this reference incorporated herein.

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the

After filing return to: OTF  
First National Bank of Omaha  
Attn: Senior Officer, Mortgage Loan Department  
1620 Dodge Street  
Omaha, Nebraska 68102

Omaha, Title  
13915 Gold Circle

OT 161689

possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The Real Estate, Improvements and the additional property above described are hereinafter referred to as the "Mortgaged Property."

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

A. Payment of the principal sum of Seven Hundred Fifty Thousand Dollars (\$750,000) evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof, with a stated maturity date of July 31, 2010.

B. Performance, discharge of and compliance with every other obligation, covenant and agreement of Trustor in the Promissory Note, other than as set forth in A. above.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor contained herein, incorporated herein by reference or contained in any other "Loan Document," as defined in the Promissory Note or in any other agreement now or hereafter at any time given by Trustor to secure any indebtedness or obligation hereby secured, or any part thereof.

D. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

E. Payment of future advances necessary to protect the Mortgaged Property.

F. Payment of future advances to be made at the option of Trustee and Beneficiary.

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

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

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

3. **Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Mortgaged Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against the Mortgaged Property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed Improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any building loan agreement between Trustor and Beneficiary,

(d) to allow Beneficiary to inspect the Mortgaged Property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.

4. **Fire and Casualty Insurance:** To keep the Mortgaged Property insured against loss or damage by fire and other risk or risks which, in the opinion of Beneficiary should be insured against, under policies of insurance with loss payable to Beneficiary in form, amount and companies acceptable to Beneficiary. Said policies shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Trustor to Beneficiary to all rights thereunder, including all return premiums; to deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and make payment of premiums thereon, which payment is repayable on demand. Neither Trustee nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not Event of Default hereunder has occurred shall Beneficiary, by the fact or approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Trustor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. In case of any loss the amount collected under any policy of insurance on the Mortgaged Property may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness and/or obligation secured hereby and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the Improvements partially or totally destroyed to a condition satisfactory to said Beneficiary, or said amount, or any portion thereof, may be released to the Trustor. In any such event neither the Trustee nor the Beneficiary shall be obligated to see the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

5. **Taxes and Other Sums Due:** To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting the Mortgaged Property, and in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on the Mortgaged Property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto, (2) all costs, fees and expenses of this trust, whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary, not to exceed the maximum amount allowed bylaw therefor at the time when such request is made, (4) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor, (5) if the Mortgaged Property includes a leasehold estate, all payments and obligations required of the Trustor, or his successor in interest, under the terms of the instruments or instruments creating such leasehold, Trustor hereby agreeing not to amend, change, or modify his leasehold interest or the terms on which he has such leasehold interest, or to do so, without the written consent of Beneficiary being first obtained, (6) all payments and monetary obligations required of the owner of the Mortgaged Property under any declaration of covenants, conditions and restrictions pertaining to the Mortgaged Property or any modification thereof. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing



10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgment, settlement or otherwise, (a) for injury or damage to the Mortgaged Property, or (b) in connection with any condemnation for public use or injury to the Mortgaged Property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may acquire.

All amounts received by Beneficiary pursuant to this Deed of Trust under any fire or other insurance policy, in connection with any condemnation for public use of or injury to the Mortgaged Property, for injury or damage to the Mortgaged Property or in connection with the transaction financed by the loan secured hereby are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any Event of Default or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of the Mortgaged Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or Trustee with respect to the remainder of the Mortgaged Property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, in come, issues and profits herein before assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding the assignment of the Rents and Profits set forth above, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of the Mortgaged Property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement secured hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as

counsel and paying his reasonable fees. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the Mortgaged Property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment.

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

6. **Sums Advanced to Bear Interest:** To pay upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the default rate in the Promissory Note and shall be secured by this Deed of Trust.

7. **Assignment of Deposits:** That as further additional security if this be a construction loan, Trustor hereby transfers and assigns to Beneficiary during continuance of these Trusts, all right, title and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to the Mortgaged Property.

8. **Failure of Trustor to Comply with Deed of Trust:** Should Trustor fail to make any payment, or to do any act as provided in this Deed of Trust, or fail to perform any obligation secured by this Deed of Trust, or do any act Trustor agreed not to do, the same shall constitute an Event of Default under this Deed of Trust. Beneficiary, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof and without contesting the validity or amount of the same, may (a) make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Mortgaged Property for such purposes, and (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgment is or appears to be prior or superior hereto, and (c) in exercising any such power, pay necessary expenses, employ counsel and pay its reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary.

**IT IS MUTUALLY AGREED THAT:**

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

10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgment, settlement or otherwise, (a) for injury or damage to the Mortgaged Property, or (b) in connection with any condemnation for public use or injury to the Mortgaged Property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may acquire.

All amounts received by Beneficiary pursuant to this Deed of Trust under any fire or other insurance policy, in connection with any condemnation for public use of or injury to the Mortgaged Property, for injury or damage to the Mortgaged Property or in connection with the transaction financed by the loan secured hereby are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any Event of Default or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of the Mortgaged Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or Trustee with respect to the remainder of the Mortgaged Property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, in come, issues and profits herein before assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding the assignment of the Rents and Profits set forth above, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of the Mortgaged Property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement secured hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as

aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. **Acceleration Clause; Judicial Foreclosure or Trustee's Sale on Default:** Upon the occurrence of any one or more of the following (hereinafter referred to as an "Event of Default"):

(a) failure by Trustor to pay within ten (10) days of the date such payment is due and payable, except with respect to the final payment, for which there is no grace period, (i) any payment of principal of or interest on the Promissory Note, or (ii) any other sum due under the Promissory Note or under any other "Loan Document," as defined in the Promissory Note, together with interest thereon;

(b) failure by Trustor to punctually perform or observe any covenant or agreement contained in this Deed of Trust (other than the monetary obligations described in subparagraph (a) above) and such failure shall not have been cured within thirty (30) days after written notice from Beneficiary of such failure;

(c) the occurrence of a default, or an Event of Default, under any Loan Document (other than the Promissory Note) or under any other obligation of Trustor to Beneficiary, whether or not existing on the date hereof or hereafter created or arising, and such failure is not cured within the applicable cure period, if any;

(d) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Trustor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the "Mortgaged Property," or of any or all of the royalties, revenues, rents, issues or profits thereof; or Trustor shall make any general assignment for the benefit of creditors, or shall admit in writing Trustor's inability to pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Trustor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Trustor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Trustor which shall become alien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(g) deleted;

(h) if, during the term of the Promissory Note, Trustor shall, without the prior written approval of Beneficiary, sell, convey, alienate, mortgage or encumber the Mortgaged Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily; or if there is any merger, consolidation or dissolution affecting Trustor;

(i) any assignment by Trustor of the whole or any part of the rents, issues or profits arising from the Mortgaged Property to any person without the consent of Beneficiary;

(j) at any time any representation, warranty or statement made by Trustor in any Loan Document, certificate or financial statement delivered by Trustor shall be incorrect or misleading in any material respect; or any material misrepresentation shall at any time be made to Beneficiary by Trustor; or

(k) if any of the events in (d), (e) or (f) shall occur with respect to any Guarantor of the Promissory Note;

then, at the option of Beneficiary, Beneficiary may declare all sums evidenced by the Promissory Note, together with all accrued interest and any other sums due under any of the Secured Obligations, if such Event of Default is not cured and made good within such time and after such notice as may be required by applicable law, immediately due and payable and this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or the Mortgaged Property may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

In the event that the property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent (5%) of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

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

16. **Security Agreement:** This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder Beneficiary shall have all of the rights and remedies of a secured party under the Nebraska Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of

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

17. **Fixture Financing Statement:** This Deed of Trust is intended to be a financing statement within the purview of the Nebraska Uniform Commercial Code with respect to those items of the Mortgaged Property as constitute fixtures on the Real Estate.

Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. For this purpose, the following information is provided:

(a) The name and address of the Secured Party is Beneficiary, whose address is stated in Section 6.05 of this Deed of Trust;

(b) The name and address of the Debtor is Trustor, whose address is stated in Section 6.05 of this Deed of Trust;

(c) The collateral covered by this Deed of Trust, as a financing statement, is all goods constituting part of the Mortgaged Property (as more particularly described in the granting clause of this Deed of Trust) which are or are to become fixtures;

(d) The real estate to which the property covered by this financing statement is attached or upon which it is located is the land described in Exhibit "A" to this Deed of Trust; and

(e) The name of the record owner of the real estate is Trustor.

18. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the register of deeds of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

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

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

21. **Inspection and Business Records:** Beneficiary at any time during the continuation of this Trust may enter and inspect the Mortgaged Property at any reasonable time. Trustor agrees that in the event the Mortgaged Property is now or hereafter used for commercial or residential income purposes, when requested by Beneficiary, Trustor will promptly deliver to Beneficiary, such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Beneficiary, which will be in form and content prepared according to the usual and acceptable accounting principles and practices, which statements shall cover the financial operations relating to the Mortgaged Property. Trustor further agrees when requested by Beneficiary to promptly deliver in writing such further additional information as required by Beneficiary relating to any such financial statements.

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

23. **Law Applicable:** That this Deed of Trust shall be construed according to the laws of the State of Nebraska.

24. **Illegality:** In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

25. **General Provisions:** (a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Beneficiary herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this Deed of Trust, and shall not be used in construing it. If more than one person is named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.



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

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

Bay Hills Limited Partnership, Trustor      c/o W. L. Morrison, Jr.  
N.P. Dodge Company  
8701 West Dodge Road  
Omaha, Nebraska 68114

First National Bank of Omaha, Trustee  
and Beneficiary      First National Bank of Omaha  
Attn: Senior Officer, Mortgage Loan Department  
1620 Dodge Street  
Omaha, Nebraska 68102

With a copy to:      James D. Buser, Esquire  
Pansing Hogan Ernst & Bachman, LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

28. **Miscellaneous:**

(a) Any provision in this Deed of Trust to the contrary notwithstanding, the occurrence of any default or Event of Default and the right of Beneficiary to accelerate contained herein shall be subject to the applicable grace and cure periods, if any, provided in the Promissory Note secured hereby.

(b) Subject to the provisions of subparagraph (c) below, notwithstanding anything contained in this Deed of Trust to the contrary or contained in the Promissory Note or contained in any other "Loan Document," as defined in the Promissory Note, the sale of lots, or portions of lots, from the Real Estate of the Trustor in the ordinary course of its business shall not constitute an Event of Default or a default under the Promissory Note, this Deed of Trust or under any of the other Loan Documents, or enable the Beneficiary or Trustee to accelerate the indebtedness secured hereby.

(c) Provided that an Event of Default or default has not occurred and is not continuing under this Deed of Trust, the Promissory Note or any of the other Loan Documents, Trustee and Beneficiary shall reconvey platted lots comprising the Real Estate upon receipt of the Applicable Principal Reduction set forth in the Promissory Note secured hereby and the payment of Fifty Dollars (\$50.00) Release Fee for each lot reconveyed from this Deed of Trust.

(d) Trustee and Beneficiary hereby agree to execute such documents and take such actions as shall reasonably be required for the subdivision platting of the Real Estate into the Bay Hills subdivision and for the Sanitary and Improvement District's installation of improvements.



IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

BORROWER:

**BAY HILLS LIMITED PARTNERSHIP**, a  
Nebraska limited partnership

By: DODGE LAND CO., a Nebraska  
corporation, General Partner

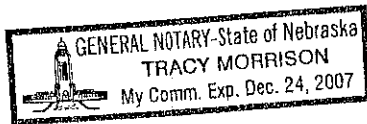
By: *W. L. Morrison, Jr.*  
W. L. Morrison, Jr., President

**FIRST NATIONAL BANK OF OMAHA**, a  
national banking association

By: *Ralph J. Hovak*  
Title: *Vice Pres*

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 19 day of July, 2007, by W. L. Morrison, Jr., President of Dodge Land Co., a Nebraska corporation, General Partner of Bay Hills Limited Partnership, a Nebraska limited partnership, on behalf of the partnership.



*Tracy Morrison*  
Notary Public

## **EXHIBIT "A"**

### **Legal Description**

Lots 5, 9 and 12, Block 1, Lots 6R, 7R, 8R, 9R, 10R, 11R and 12R Block 7, Lots 2R, 3R, 4R, 5R, 6R, 7R, 8R and 9R Block 14, Lots 39 and 41, Block 16, Lots 1, 3, 4, 5, 8, 12 and 19, Block 17, Lots 2 and 3 Block 18, Lots 5, 6, and 8 Block 19, Lots 3, 5, 7, and 9 Block 20, Lots 21, 22, 30, 31, 32 and 60 Block 27, Lots 1A & B, 2 A & B, 3A & B, 4 A & B, 5 A & B, 6 A & B, 7 A & B, 9 A & B, 10 A & B, 11 A & B, 12 A & B, 13 A & B, 14 A & B, 15 A & B, 16 A & B, 17 A & B, 18 A & B, 19 A & B, 20 A & B, 21.A & B, 22 A & B, 23 A & B and 24 A & B Block 28, Lots 2 and 4 through 26, inclusive, Block 29, and Lot 3 Block 30 all in Buccaneer Bay, a subdivision, as surveyed, platted and recorded in Cass County, Nebraska.

Lots 1 through 57, inclusive Block 31 and 13 RR Block 7, all in Buccaneer Bay Replat II, a subdivision, as surveyed, platted and recorded in Cass County, Nebraska.

6.1298

File No.990



FILED FOR RECORD 6-22-98 AT 9:46 A. M.  
IN BOOK 316 OF 106 PAGE 30  
REGISTER OF DEEDS, CASS CO., NE Patricia Manning  
Doc # 577 \*242.50

WHEN RECORDED, PLEASE RETURN TO:  
First National Bank of Omaha  
11404 West Dodge Road  
Omaha, NE 68154  
ATTN: Mortgage Loan Department

DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 12TH day of June, 1998, among Bay Hills Limited Partnership, a Nebraska limited partnership, as Trustor, First National Bank of Omaha, a national banking association, as Trustee, and First National Bank of Omaha, a national banking association, Omaha, Nebraska, as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, the following described Real Estate located in Cass County Nebraska:

Lots 1R and 2R, Lots 4R thru 17R, and Lots 25R thru 40R, Buccaneer Bay First Addition Administrative Replat; and

the following Lots located in Buccaneer Bay, a Subdivision, as surveyed, platted and recorded:

- Lot 20, Block 3;
- Lots 5 and 14, Block 5;
- Lots 1 thru 36, Block 7;
- Lots 1 thru 43, Block 8;
- Lots 1 thru 11, Block 9;
- Lots 1 thru 9, Block 10;
- Lots 1 thru 48, Block 11;
- Lots 1 thru 16, Block 12;
- Lots 1 thru 43, Block 13;
- Lots 2 thru 10, Block 14;
- Lots 1 thru 18, Lots 20 thru 27, and Lots 29 thru 59, Block 15;
- Lots 2, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 25, and 26, Block 16;
- Lots 3,4,5,19, Block 17;
- Lots 2 and 3, Block 19; and
- Lots 21 thru 28, Lots 30 thru 39, Lots 41 thru 47, and Lots 49 thru 62, Block 27;

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the

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6.1298

File No. 990

Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The Real Estate and the additional property above described are hereinafter referred to as the "Mortgaged Property".

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

A. Payment of the principal sum of One Million Three Hundred Thousand and 00/100ths Dollars (\$1,300,000.00), evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and release fees according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every other obligation, covenant and agreement of Trustor in the Promissory Note, other than as set forth in A. above.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor contained herein, incorporated herein by reference or contained in any other "Loan Document," as defined in the Promissory Note or in any other agreement now or hereafter at any time given by Trustor to secure any indebtedness or obligation hereby secured, or any part thereof.

D. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

E. Payment of future advances necessary to protect the Mortgaged Property.

F. Payment of future advances to be made at the option of Trustor and Beneficiary.

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

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whatsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Mortgaged Property, subject only to the title exceptions enumerated in the title insurance policy issued to Beneficiary in connection with the loan secured hereby.

2. **Maintenance:** To keep the Mortgaged Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof, to comply with the provisions of restrictions affecting the Mortgaged Property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon

6.1298

File No.990

substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon the Mortgaged Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

3. **Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Mortgaged Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against the Mortgaged Property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed Improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any construction loan agreement between Trustor and Beneficiary, (d) to allow Beneficiary to inspect the Mortgaged Property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.

4. **Fire and Casualty Insurance:** To keep the Mortgaged Property insured against loss or damage by fire and other risk or risks which, in the opinion of Beneficiary should be insured against, under policies of insurance with loss payable to Beneficiary in form, amount and companies acceptable to Beneficiary. Said policies shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Trustor to Beneficiary to all rights thereunder, including all return premiums; to deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and make payment of premiums thereon, which payment is repayable on demand. Neither Trustor nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not Event of Default hereunder has occurred shall Beneficiary, by the fact or approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Trustor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. In case of any loss the amount collected under any policy of insurance on the Mortgaged Property may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness and/or obligation secured hereby and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the Improvements partially or totally destroyed to a condition satisfactory to said Beneficiary, or said amount, or any portion thereof, may be released to the Trustor. In any such event neither the Trustor nor the Beneficiary shall be obligated to see the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustor's sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

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6.1298

File No.990

5. **Taxes and Other Sums Due:** To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting the Mortgaged Property, and in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on the Mortgaged Property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto, (2) all costs, fees and expenses of this trust, whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary, not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor, (5) if the Mortgaged Property includes a leasehold estate, all payments and obligations required of the Trustor, or his successor in interest, under the terms of the instruments or instruments creating such leasehold, Trustor hereby agreeing not to amend, change, or modify his leasehold interest or the terms on which he has such leasehold interest, or to do so, without the written consent of Beneficiary being first obtained, (6) all payments and monetary obligations required of the owner of the Mortgaged Property under any declaration of covenants, conditions and restrictions pertaining to the Mortgaged Property or any modification thereof. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his reasonable fees. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the Mortgaged Property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment.

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

6. **Sums Advanced to Bear Interest:** To pay upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the default rate in the Promissory Note and shall be secured by this Deed of Trust.

7. **Assignment of Deposits:** That as further additional security if this be a construction loan, Trustor hereby transfers and assigns to Beneficiary during continuance of these Trusts, all right, title and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to the Mortgaged Property.

8. **Failure of Trustor to Comply with Deed of Trust:** Should Trustor fail to make any payment, or to do any act as provided in this Deed of Trust, or fail to perform any obligation secured by this Deed of Trust, or do any act Trustor agreed not to do, the same shall constitute an Event of Default under this Deed of Trust. Beneficiary, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof and without contesting the validity or amount of the same, may (a) make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Mortgaged Property for such purposes, and (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgement is or appears to be prior or

6.1298

File No. 990

superior hereto, and (c) in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary.

**IT IS MUTUALLY AGREED THAT:**

9. **Litigation:** Trustor shall defend this Trust in any action or proceeding purporting to affect the Mortgaged Property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Mortgaged Property, and either Trustee or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgement be entered in any action or proceeding; and Trustor or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on demand shall pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Beneficiary or Trustee in the Mortgaged Property is directly questioned by such action, including but not limited to any action for the condemnation or partition of the Mortgaged Property.

10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgement, settlement or otherwise, (a) for injury or damage to the Mortgaged Property, or (b) in connection with any condemnation for public use or injury to the Mortgaged Property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may acquire.

All amounts received by Beneficiary pursuant to this Deed of Trust under any fire or other insurance policy, in connection with any condemnation for public use of or injury to the Mortgaged Property, for injury or damage to the Mortgaged Property or in connection with the transaction financed by the loan secured hereby are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any Event of Default or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of the Mortgaged Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or Trustee with respect to the remainder of the Mortgaged Property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.



6.1298

File No.990

12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits hereinbefore assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding the assignment of the Rents and Profits set forth above, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of the Mortgaged Property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement secured hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. **Acceleration Clause; Judicial Foreclosure or Trustee's Sale on Default:** Upon the occurrence of any one or more of the following (hereinafter referred to as an "Event of Default"):

(a) failure by Trustor to pay within ten (10) days of the date such payment is due and payable, except with respect to the final payment, for which there is no grace period, (i) any payment of principal or interest on the Promissory Note, or (ii) any other sum due under the Promissory Note or under any other "Loan Document," as defined in the Promissory Note, together with interest thereon;

(b) failure by Trustor to punctually perform or observe any covenant or agreement contained in this Deed of Trust (other than the monetary obligations described in subparagraph (a) above) and such failure shall not have been cured within thirty (30) days after written notice from Beneficiary of such failure;

(c) the occurrence of a default, or an Event of Default, under any Loan Document (other than the Promissory Note) or under any other obligation of Trustor to Beneficiary, whether or not existing on the date hereof or hereafter created or arising, and such failure is not cured within the applicable cure period, if any;

(d) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Trustor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the "Mortgaged





6.1298

File No.990

Property," or of any or all of the royalties, revenues, rents, issues or profits thereof; or Trustor shall make any general assignment for the benefit of creditors, or shall admit in writing Trustor's inability to pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Trustor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Trustor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Trustor which shall become a lien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(g) any suit or proceeding shall be filed against Trustor or any endorser or surety on any of the Loan Documents which, if adversely determined, could substantially impair the ability of Trustor or any endorser or surety to perform any of their obligations contained in the Loan Documents, as determined by Beneficiary in its sole and absolute discretion, provided that such suit or proceeding is not dismissed within thirty (30) days after service of summons upon such party;

(h) if, during the term of the Promissory Note, Trustor shall, without the prior written approval of Beneficiary, sell, convey, alienate, mortgage or encumber the Mortgaged Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily; or if there is any merger, consolidation or dissolution affecting Trustor;

(i) any assignment by Trustor of the whole or any part of the rents, issues or profits arising from the Mortgaged Property to any person without the consent of Beneficiary;

(j) at any time any representation, warranty or statement made by Trustor in any Loan Document, certificate or financial statement delivered by Trustor shall be incorrect or misleading in any material respect; or any material misrepresentation shall at any time be made to Beneficiary by Trustor; or

(k) if any of the events in (d), (e) or (f) shall occur with respect to any Guarantor of the Promissory Note;

then, at the option of Beneficiary, Beneficiary may declare all sums evidenced by the Promissory Note, together with all accrued interest and any other sums due under any of the Secured Obligations, if such Event of Default is not cured and made good within such time and after such notice as may be required by applicable law, immediately due and payable and this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or the Mortgaged Property may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

In the event that the property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. After the



6.1298

File No.990

lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

Upon any Event of Default under this Deed of Trust or any note secured hereby and following any acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to a foreclosure sale, whether under the power of sale contained herein or pursuant to judicial foreclosure proceedings, shall constitute an evasion of the payment terms hereof and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include a premium required under the prepayment privilege, if any, contained in any note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a premium for such prepayment of five percent of the then principal balance.

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

16. **Security Agreement:** This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under the Nebraska Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any Event of Default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of the Mortgaged Property which is personal property and

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6.1298

File No.990

subject to security interest of Beneficiary hereunder to be sold in one of public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of the Mortgaged Property by Trustee, as provided for in this Deed of Trust, and Beneficiary shall further have all rights and remedies, whether at law in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Expenses of retaking, holding, preparing for sale, selling or the like shall be born by Trustor and shall include Beneficiary's and Trustee's fees and legal expenses. Beneficiary shall have the right to enter upon the Real Estate and the Improvements or any other real property or any personal property which is the subject of the security interest granted herein as located to take possession of, assemble and collect such personal property or to render it usable, or Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at a place deemed reasonably convenient to Beneficiary. If notice is required by law, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of the Mortgaged Property or of the time of or after which any private sale or other intended disposition is to be made, and, if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Deed of Trust upon giving the same notice with respect to the sale under the power of sale given the Trustee under this Deed of Trust.

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

18. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the register of deeds of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

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

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

21. **Inspection and Business Records:** Beneficiary at any time during the continuation of this Trust may enter and inspect the Mortgaged Property at any reasonable time. Trustor agrees that in the event the Mortgaged Property is now

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File No.990

or hereafter used for commercial or residential income purposes, when requested by Beneficiary, Trustor will promptly deliver to Beneficiary, such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Beneficiary, which will be in form and content prepared according to the usual and acceptable accounting principles and practices, which statements shall cover the financial operations relating to the Mortgaged Property. Trustor further agrees when requested by Beneficiary to promptly deliver in writing such further additional information as required by Beneficiary relating to any such financial statements.

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

23. Law Applicable: That this Deed of Trust shall be construed according to the laws of the State of Nebraska.

24. Illegality: In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

25. General Provisions: (a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Beneficiary herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this agreement, and shall not be used in construing it. If more than one person is named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

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

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

Bay Hills Limited Partnership  
c/o N.P. Dodge Company  
8701 West Dodge Road  
Omaha, Nebraska 68114  
(Trustor)



6.1298

File No.990

First National Bank of Omaha  
1620 Dodge Street  
Omaha, Nebraska 68102  
(Trustee and Beneficiary)

28. **Partial Deeds of Reconveyance:** Provided that Trustor is not in default under this Deed of Trust or any of the obligations secured hereby, it is agreed that Partial Deeds of Reconveyance shall be executed by Trustee at the request of Beneficiary and delivered to Trustor upon a principal reduction in the amount of Seven Thousand Five Hundred and 00/100ths Dollars (\$7,500.00) per Lot, except for Lots in Block 27, Buccaneer Bay, for which the principal reduction shall be a fee payment of \$50.00 per Lot to be reconveyed, all as more particularly set forth in the Promissory Note.

29. **Consolidation of Prior Deeds of Trust:** The \$1,300,000.00 Promissory Note secured by this Deed of Trust consolidates the outstanding principal balances owing by Trustor to Beneficiary in the total principal amount of \$1,212,580.86 and presently undisbursed principal of \$87,419.14, evidenced by the following Promissory Notes:

Promissory Note dated October 26, 1995, in the principal amount of \$200,000.00;  
Promissory Note dated May 2, 1996, in the principal amount of \$100,000.00;  
Promissory Note dated November 13, 1996, in the principal amount of \$750,000.00;  
Promissory Note dated October 30, 1997, in the principal amount of \$260,000.00;

all of which indebtedness shall be deemed consolidated and modified by the One Million Three Hundred Thousand and 00/100ths Dollars (\$1,300,000.00) Promissory Note. This Deed of Trust shall accordingly, be deemed a consolidation of the following Deeds of Trust and Modification Agreement given by Trustor to Beneficiary securing the above described Promissory Notes:

(a) Deed of Trust, Security Agreement, and Assignment of Rents, dated October 26, 1995, filed November 13, 1995, in Book 273 at Page 407 of the Mortgage Records of Cass County Nebraska;

(b) Mortgage Loan Modification Agreement dated May 2, 1996, filed May 13, 1996, in Book 280 at Page 366 of the Mortgage Records of Cass County, Nebraska;

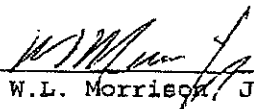
(c) Deed of Trust, Security Agreement, and Assignment of Rents, dated November 13, 1996, filed December 2, 1996, in Book 289 at Page 356 of the Mortgage Records of Cass County Nebraska;

(d) Deed of Trust, Security Agreement, and Assignment of Rents, dated October 30, 1997, filed November 10, 1997, in Book 304 at Page 720 of the Mortgage Records of Cass County Nebraska.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

Bay Hills Limited Partnership, a Nebraska limited partnership

By: Dodge Land Co., a Nebraska corporation, General Partner

By:   
W.L. Morrison, Jr., President



# 525



First National Bank of Omaha  
Mortgage Loan Department  
One First National Center  
Omaha, Nebraska 68102

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

**THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS**, made this 22 day of April, 19 93, among

DODGE LAND CO., a Nebraska corporation,

as Trustor,

FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska,

as Trustee, and

FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska,

as Beneficiary:

FILED FOR RECORD 04-27-93 AT 8:02 A.M.

IN BOOK 238 OF MTG. PAGE 653

WITNESSETH: REGISTER OF DEEDS, CASS CO. NE Patricia M. ...  
Doc. # 525 \$ 102.50

That Trustor irrevocably grants, transfer and assigns to Trustee in trust, with power of sale, the following described Real Estate:

See Exhibit "A" attached hereto and by this reference  
Incorporated herein,

**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.**

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The property so conveyed hereunder is hereinafter referred to as "such property", and in the Promissory Note secured hereby the Mortgaged Property.

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

- Payment of the principal sum of **Five Hundred Thousand Dollars (\$500,000.00)** evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.
- Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor incorporated by reference or contained herein or in any other security agreement or deed of trust at any time given to secure any indebtedness hereby secured, or any part thereof, including an Environmental Indemnity Agreement of even date herewith.
- Payment of all fees and charges of Beneficiary, whether or not set forth herein.
- Payment of future advances necessary to protect such property.
- Payment of future advances to be made at the option of Trustor and Beneficiary.

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

- Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to such property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whatsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon such property. See Additional Provisions attached hereto.
- Maintenance:** To keep such property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of restrictions affecting such property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon such property in violation of law; to do all other acts in a timely and proper manner which from the character or use of such property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.
- Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against such property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any construction loan agreement between Trustor and Beneficiary, (d) to allow Beneficiary to inspect such property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.



4. **Fire and Casualty Insurance:** To keep such property insured against loss or damage by fire and other risk or risks which, in the opinion of Beneficiary should be insured against, under policies of insurance with loss payable to Beneficiary in form, amount and companies acceptable to Beneficiary. Said policies shall be delivered to and remain in possession of Beneficiary as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Trustor to Beneficiary to all rights thereunder, including all return premiums; to deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and make payment of premiums thereon, which payment is repayable on demand. Neither Trustor nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy heretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not default hereunder has occurred shall Beneficiary, by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Trustor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. In case of any loss the amount collected under any policy of insurance on such property may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness and/or obligation secured hereby and in such order and amount as Beneficiary may determine; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary, or said amount, or any portion thereof, may be released to the Trustor. In any such event neither the Trustor nor the Beneficiary shall be obligated to see the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

5. **Taxes and Other Sums Due:** To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting such property, and in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on such property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto, (2) all costs, fees and expenses of this trust, whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary, not to exceed the maximum amount allowed by law herefor at the time when such request is made, (4) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor, (5) if such property includes a leasehold estate, all payments and obligations required of the Trustor, or his successor in interest, under the terms of the instruments or instruments creating such leasehold, Trustor hereby agreeing not to amend, change, or modify his leasehold interest or the terms on which he has such leasehold interest, or to do so, without the written consent of Beneficiary being first obtained, (6) all payments and monetary obligations required of the owner of such property under any declaration of covenants, conditions and restrictions pertaining to such property or any modification thereof. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his reasonable fees. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of such property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment.

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

6. **Sums Advanced to Bear Interest:** To pay upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the default rate in the Promissory Note and shall be secured by this Deed of Trust.

7. **Assignment of Deposits:** That as further additional security if this be a construction loan, Trustor hereby transfers and assigns to Beneficiary during continuance of these Trusts, all right, title and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to such property.

8. **Failure of Trustor to Comply with Deed of Trust:** Should Trustor fail to make any payment, or to do any act as provided in this Deed of Trust, or fail to perform any obligation secured by this Deed of Trust, or do any act Trustor agreed not to do, Trustor shall be in default under this Deed of Trust. Beneficiary, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof and without contesting the validity or amount of the same, may (a) make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon such property for such purposes, and (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgement is or appears to be prior or superior hereto, and (c) in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary.

**IT IS MUTUALLY AGREED THAT:**

9. **Litigation:** Trustor shall defend this Trust in any action or proceeding purporting to affect such property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of such property, and either Trustor or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgement be entered in any action or proceeding; and Trustor or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on demand shall pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Beneficiary or Trustee in such property is directly questioned by such action, including but not limited to any action for the condemnation or partition of such property.

10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgment, settlement or otherwise, (a) for injury or damage to such property, or (b) in connection with any condemnation for public use or injury to such property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary may acquire.

All amounts received by Beneficiary pursuant to this Deed of Trust under any fire or other insurance policy, in connection with any condemnation for public use of or injury to such property, for injury or damage to such property or in connection with the transaction financed by the loan secured hereby are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any default, or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of such property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or Trustee with respect to the remainder of such property, Trustor may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.





12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits hereinbefore assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding any other provisions hereof, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of such property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. **Judicial Foreclosure or Trustee's Sale on Default:** Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, or any agreement secured hereby, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

In the event that the property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell such property. After the lapse of such time as then may be required by law following recording of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of such property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. Trustee may also sell at any sale and as part thereof any shares of corporate stock securing the obligation secured hereby, and Trustor waives demand and notice of such sale. (Beneficiary at its option may also foreclose on such shares by independent pledge sale, and Trustor waives demand and notice of such sale.) The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

Upon any default under this Deed of Trust or any note secured hereby and following any acceleration of maturity of the indebtedness secured hereby, a lender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to a foreclosure sale, whether under the power of sale contained herein or pursuant to judicial foreclosure proceedings, shall constitute an evasion of the payment terms hereof and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include a premium required under the prepayment privilege, if any, contained in any note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a premium for such prepayment of five percent of the then principal balance.

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

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

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

18. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the register of deeds of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all his title, estate, rights, power and duties.

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



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

21. **Inspection and Business Records:** Beneficiary at any time during the continuation of this Trust may enter and inspect such property at any reasonable time. Trustor agrees that in the event such property is now or hereafter used for commercial or residential income purposes, when requested by Beneficiary, Trustor will promptly deliver to Beneficiary, such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Beneficiary, which will be in form and content prepared according to the usual and acceptable accounting principles and practices, which statements shall cover the financial operations relating to such property. Trustor further agrees when requested by Beneficiary to promptly deliver in writing such further additional information as required by Beneficiary relating to any such financial statements.

22. **Acceleration Clause:** Should Trustor be in default under this Deed of Trust, or should Trustor, or any successor in interest of Trustor, voluntarily or involuntarily sell, exchange, convey, transfer, contract to sell, lease with option to purchase, sublease, change the character or use of, or further encumber such property, or any part thereof, or any interest therein; or if any said parties shall be divested of title to such property, or any part thereof, or any interest therein, either voluntarily, or involuntarily; or if title to such property be subjected to any lien or charge, voluntarily or involuntarily, contractual or statutory, without the written consent of Beneficiary being first had and obtained, then Beneficiary shall have the right, at its option, to declare all sums secured hereby forthwith due and payable; and this same right of acceleration shall be available to Beneficiary if the undersigned is a partnership and any interest of a general partner terminates, is assigned or transferred, or is diminished; or if the undersigned is a corporation and any of the corporate stock is transferred, sold or assigned; or if the undersigned is a trustee of a trust and there is a change of any of the beneficial interest of the trust.

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

24. **Acknowledgment:** Trustor agrees and acknowledges that prior to the execution of this Deed of Trust, Trustor did acknowledge in writing and hereby confirms again that (a) this Deed of Trust is not a mortgage, but a deed of trust, (b) that the power of sale provided for herein provides substantially different rights and obligations for Trustor than a mortgage in the event of a default or breach of any obligation hereunder, and (c) the aforementioned written acknowledgment was executed prior to the execution of this Deed of Trust.

25. **Law Applicable:** That this Deed of Trust shall be construed according to the laws of the State of Nebraska.

26. **Illegality:** In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

27. **General Provisions:** (a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Beneficiary herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this agreement, and shall not be used in construing it. If more than one person is named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

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

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

Dodge Land Co., c/o N. P. Dodge Company, 8701 West Dodge Road, Omaha, Nebraska 68114  
(Trustor) (Address of Trustor)  
First National Bank of Omaha, a national banking association, One First National Plaza, Omaha, Nebraska 68102  
(Trustee and Beneficiary)

30. **Miscellaneous.** Provided that Trustor is not in default under this Deed of Trust for any of the obligations secured hereby, it is agreed that partial deeds of reconveyance shall be executed upon a principal reduction in the amount of \$6,500.00 per platted lot to be reconveyed plus a release fee of \$75.00 per lot to be reconveyed, all more particularly set forth in the Promissory Note.

31. **Additional Provisions.** See Additional Provisions attached hereto.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

DODGE LAND CO., a Nebraska corporation

(CORPORATE SEAL)

By: W. L. Morrison, Jr.  
W. L. Morrison, Jr., President

STATE OF NEBRASKA )  
)ss.  
COUNTY OF DOUGLAS )

On this 24 day of APRIL, 19 93, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said county, personally came W. L. Morrison, Jr., President of Dodge Land Co., a Nebraska corporation,

to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed and the voluntary act and deed of said corporation.

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

My commission expires: DECEMBER 24, 1995

Tracy Urbanek  
Notary Public



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File No. 656

ADDITIONAL PROVISIONS TO DEED OF TRUST1. Title:

Notwithstanding the provisions of Paragraph 1 of the printed Deed of Trust, the liens and security interests herein granted shall be subject to the following permitted exceptions:

- a. Plat survey and Dedication of Buccaneer Bay filed September 5, 1974 in Book 12 at Page 443 and in Plat Book 9 at Page 7 both of the Records of Cass County, Nebraska, reveals O.P.P.D Powerline easements affecting subject property.
- b. Covenants, conditions and restrictions contained in instrument filed April 4, 1977 in Book 19 at Page 298 of the Miscellaneous Records of Cass County, Nebraska.  
Easements granted for utilities over, under and upon a five foot wide strip of land adjoining and rear and side boundary lines of the lots.  
Provisions of architectural control and approval of construction plans set forth therein.
- c. Easement granted to Omaha Public Power District and Lincoln Telephone & Telegraph Company by instrument dated July 22, 1975, filed August 29, 1975 in Book 17 at Page 545 of the Miscellaneous Records of Cass County, Nebraska, over, upon, above, along, under, in and across a strip of land 5 feet wide lying adjacent and parallel to the side lot lines of certain lots.
- d. Easement granted to Omaha Public Power District and Lincoln Telephone & Telegraph Company by instrument dated July 22, 1975, filed August 29, 1975 in Book 17 at Page 547 of the Miscellaneous Records of Cass County, Nebraska.
- e. Right-of-Way Easement filed November 19, 1976 in Book 19 at Page 92 of the Miscellaneous Records of Cass County, Nebraska, to Omaha Public Power District and Lincoln Telephone & Telegraph, affecting certain lots of subject property.
- f. Easement granted to Nebraska Power Company by instrument filed October 9, 1928 at Book V at Page 645 of the Records of Cass County, Nebraska, to construct and maintain electric facilities over, upon, along and above the E $\frac{1}{2}$ NE $\frac{1}{4}$  Sec. 5-12-13.
- g. Easement granted to Nebraska Power Company by instrument filed October 9, 1928 in Book V at Page 646 of the Records of Cass County, Nebraska, to construct and maintain electric facilities over, upon, along and above the NW $\frac{1}{4}$ NE $\frac{1}{4}$  & N $\frac{1}{2}$ NW $\frac{1}{4}$  Sec. 5-12-13.
- h. Easement granted to Rural Water District No. 1, Cass County, Nebraska by instrument filed June 29, 1972 in Book 13 at Page 180 of the Records of Cass County, Nebraska for installation and maintenance of water lines across and through the E $\frac{1}{2}$ NE $\frac{1}{4}$  Sec. 5-12-13.
- i. Non-specific Easement granted to Nebraska Power Company by instrument filed October 9, 1928 in Book V at Page 644 of the Records of Cass County, Nebraska, to construct and maintain electric facilities over, upon, along and above all that part of Section 32-13-13 lying south of the railway, except therefrom the E $\frac{1}{2}$ SE $\frac{1}{4}$ .
- j. Non-specific Easement granted to Nebraska Power Company by instrument filed April 30, 1920 in Book X at Page 77 of the Records of Cass County, Nebraska, to construct and maintain electric facilities over, upon, along and above the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 33-13-13, and the E $\frac{1}{2}$ SE $\frac{1}{4}$  Sec. 32-13-13.

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File No. 656

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- k. Easement granted to Omaha Public Power District by instrument filed January 5, 1956 in Book 5 at Page 202 of the Records of Cass County, Nebraska, to construct and maintain an electric transmission line over, upon and above the SE $\frac{1}{4}$ NE $\frac{1}{4}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  Sec. 32-13-12.
  - l. Right of Way Easement granted to Omaha Public Power District filed March 23, 1967 in Book 10 at Page 230 of the Records of Cass County, Nebraska, to construct and maintain an electric transmission line over, above, along, under in and across the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 33-13-13, and S 3/4 E $\frac{1}{4}$  Sec. 32-13-13.
  - m. Easement granted to Omaha Public Power District filed January 5, 1956 in Book 5 at Page 204 of the Records of Cass County, Nebraska, to construct and maintain an electric transmission line over, upon, along and above the NE $\frac{1}{4}$ SW $\frac{1}{4}$  & NW $\frac{1}{4}$ SW $\frac{1}{4}$  & SE $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 33-13-13.
  - n. Right of Way Easement granted to Rural Water District No. 1, Cass County, Nebraska, dated August 28, 1972, filed November 13, 1972 in Book 13 at Page 534 of the Miscellaneous Records of Cass County, Nebraska, affecting the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 33-13-13.
  - o. Easement granted to Omaha Public Power District by Report of Appraisers filed in County Court Cass County, Nebraska, August 28, 1967, and Corrected Report of Appraisers filed October 4, 1967, in Book 10 at Page 384 of the Records of Cass County, Nebraska, affecting the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 32-13-13.
  - p. Covenants, conditions and restrictions filed July 29, 1975, in Book 17 at Page 484 of the Miscellaneous Records of Cass County, Nebraska, which contains no forfeiture provision.  
 Provision for Homeowners Association contained therein.  
 Easement granted to Northwestern Bell Telephone Company, Omaha Public Power District and SID No. 5 of Cass County, Nebraska, over, under and upon a five foot strip of land adjoining the rear and side boundary lines of subject property.  
 Provision for Architectural Control and Approval of Construction Plans contained therein.  
 Amended Covenants, filed April 4, 1977, in Book 19 at Page 298 of the Miscellaneous Records of Cass County, Nebraska.
  - q. Subject to and together with Access Easement dated September 7, 1987, filed January 7, 1988 in Book 35 at Page 395 of the Records of Cass County, Nebraska.
  - r. Non-specific Pipeline Easement granted to Natural Gas Pipeline Company of America by instrument dated June 21, 1990, filed June 25, 1990 in Book 38 at Page 512 of the Miscellaneous Records of Douglas County, Nebraska, to construct and maintain a pipeline on, under, across and through a strip of land 50 feet wide across Lot 5 SW $\frac{1}{4}$ NE $\frac{1}{4}$  5-12-13.

2. Miscellaneous:

Provided that Trustor is not in default under this Deed of Trust or any of the obligations secured thereby, Trustee and Beneficiary agrees to execute such documents and instruments as may be reasonably required:

- a. To grant, convey and dedicate portions of the Real Estate for streets, sewers, entrances, green areas and utilities;

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File No. 656

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b. To form and initiate a sanitary and improvement district to construct, operate and maintain public improvements; and

c. To reconvey and platted lot within the Real Estate upon a principal reduction in the amount of Six Thousand Five Hundred Dollars (\$6,500.00) per lot to be reconveyed plus a release fee of Seventy-five Dollars (\$75.00) per lot to be reconveyed, all as more particularly set forth in the Promissory Note.

DODGE LAND CO., a Nebraska corporation

By: W. L. Morrison, Jr.  
W. L. Morrison, Jr.  
President

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EXHIBIT "A"LEGAL DESCRIPTION

The following described lots located in Buccaneer Bay, a Subdivision, as surveyed, platted and recorded, Cass County, Nebraska:

BLOCK 1: 5, 9, 12

BLOCK 2: 1, 12, 13, 14

BLOCK 3: 1, 2, 5, 6, 18, 23

BLOCK 4: 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21

BLOCK 5: 1, 4, 6, 7, 9, 11, 19, 21, 22, 23, 24, 28, 29, 31, 33, 34, 35, 36, 38, 39, 40, 41

BLOCK 6: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 26, 29, 30, 31

BLOCK 15: 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

BLOCK 16: 29, 30, 31, 32, 33, 34, 35, 37, 39, 41

BLOCK 17: 1, 8, 10, 12, 15, 16, 17, 23, 24, 25, 26, 27, 28

BLOCK 18: 2, 3, 5

BLOCK 19: 5, 6, 8

BLOCK 20: 1, 2, 3, 5, 7, 9, 10



12. **Full Reconveyance:** Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits hereinbefore assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding any other provisions hereof, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of such property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Trustor, mailed to Trustor at his last known address. In any event, such permission to Trustor automatically shall be revoked upon default by Trustor in payment of indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. **Judicial Foreclosure or Trustee's Sale on Default:** Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, or any agreement secured hereby, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

In the event that the property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell such property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of such property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. Trustee may also sell at any sale and as part thereof any shares of corporate stock securing the obligation secured hereby, and Trustor waives demand and notice of such sale. (Beneficiary at its option may also foreclose on such shares by independent pledge sale, and Trustor waives demand and notice of such sale.) The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

Upon any default under this Deed of Trust or any note secured hereby and following any acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to a foreclosure sale, whether under the power of sale contained herein or pursuant to judicial foreclosure proceedings, shall constitute an evasion of the payment terms hereof and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include a premium required under the prepayment privilege, if any, contained in any note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a premium for such prepayment of five percent of the then principal balance.

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

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

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

18. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the register of deeds of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

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

KNOW ALL MEN BY THESE PRESENTS:

THAT I or We, JERRY HEINRICHS

, herein called the grantor whether one or more,

in consideration of One Dollar (\$1.00) and other valuable considerations

received from grantee, do hereby grant, bargain, sell, convey and confirm unto

BUCCANEER BAY, INC.

herein called the grantee whether one or more, the following described real property in

Cass County Nebraska :

*Legal on the back*

NEBRASKA DOCUMENTARY STAMP TAX  
FEB 3 1975  
\$ 136.40 BY *B.P.*

To have and to hold the above described premises together with all tenements, hereditaments and appurtenances thereto belonging unto the grantee and to grantee's heirs and assigns forever.

And the grantor does hereby covenant with the grantee and with grantee's heirs and assigns that grantor is lawfully seised of said premises; that they are free from encumbrance except as hereinabove provided, and pro-rated real estate taxes,

that grantor has good right and lawful authority to convey the same; and that grantor warrants and will defend the title to said premises against the lawful claims of all persons whomsoever.

Dated January 15, 19 75

*Jerry Heinrichs*  
JERRY HEINRICHS  
*Patricia A. Heinrichs*

STATE OF Nebraska, County of Douglas:

Before me, a notary public qualified for said county, personally came JERRY HEINRICHS and Patricia Heinrichs & wife

known to me to be the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

Carole L. Sittler and notarial seal on January 15, 1975  
Carole L. Sittler Notary Public  
My commission expires 6:25, 1975

STATE OF Nebraska }  
County Cass } ss.

COMPARED

Entered on numerical index and filed for record in the Register of Deeds Office of said County the 3 day of February, 1975, at 2 o'clock and 20 minutes P.M., and recorded in Book 115 of Deeds at page 66

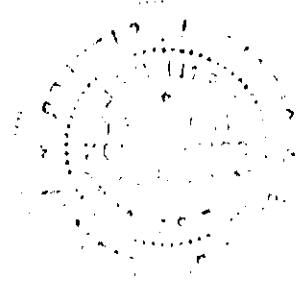
*doc # 11*  
*\$ 6.25*

*Betty Philpot*  
Reg. of Deeds  
By Deputy



The East One-Half ( $E\frac{1}{2}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section Five (5), Township Twelve (12) North, Range Thirteen (13) East of the 6th P.M., subject to existing roads, streets and easements; except that part thereof hereinafter called Parcel "B", which Parcel "B" is described as:

Beginning at the Southwest corner of the East One-Half ( $E\frac{1}{2}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of said Section Five (5), thence East along the South line of said East One-Half ( $E\frac{1}{2}$ ) of said Northeast Quarter ( $NE\frac{1}{4}$ ) a distance of 400.00 feet, thence North along a line parallel with the West line of said East One-Half ( $E\frac{1}{2}$ ) of said Northeast Quarter ( $NE\frac{1}{4}$ ) a distance of 395.00 feet, thence West along a line parallel with the South line of said East One-Half ( $E\frac{1}{2}$ ) of said Northeast Quarter a distance of 198.67 feet, thence Southwesterly to a point on the West line of said East One-Half ( $E\frac{1}{2}$ ) of said Northeast Quarter ( $NE\frac{1}{4}$ ), which point is 300.00 feet North of the point of beginning, thence South along said West line a distance of 300.00 feet to the point of beginning, and reserving for the benefit of all present and future owners of said Parcel "B" an easement for the installation and maintenance of septic tanks, cesspools and related appurtenances over, in and under a strip of land 100.00 feet in width (East and West width) lying immediately East of and adjacent to said Parcel "B".



ck # 1184  
3003

Jerry Heinrichs  
11730 Howard Road  
Omaha, Neb. - 68154

#579

6.1298

File No.990



FILED FOR RECORD 6-22-98 AT 9:46 A. M.  
IN BOOK 316 OF 1114 PAGE 30  
REGISTER OF DEEDS, CASS CO., NE Patricia Manning  
Doc # 579 #242 50

WHEN RECORDED, PLEASE RETURN TO:  
First National Bank of Omaha  
11404 West Dodge Road  
Omaha, NE 68154  
ATTN: Mortgage Loan Department

DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 12TH day of June, 1998, among Bay Hills Limited Partnership, a Nebraska limited partnership, as Trustor, First National Bank of Omaha, a national banking association, as Trustee, and First National Bank of Omaha, a national banking association, Omaha, Nebraska, as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, the following described Real Estate located in Cass County Nebraska:

Lots 1R and 2R, Lots 4R thru 17R, and Lots 25R thru 40R, Buccaneer Bay First Addition Administrative Replat; and

the following Lots located in Buccaneer Bay, a Subdivision, as surveyed, platted and recorded:

- Lot 20, Block 3;
- Lots 5 and 14, Block 5;
- Lots 1 thru 36, Block 7;
- Lots 1 thru 43, Block 8;
- Lots 1 thru 11, Block 9;
- Lots 1 thru 9, Block 10;
- Lots 1 thru 48, Block 11;
- Lots 1 thru 16, Block 12;
- Lots 1 thru 43, Block 13;
- Lots 2 thru 10, Block 14;
- Lots 1 thru 18, Lots 20 thru 27, and Lots 29 thru 59, Block 15;
- Lots 2, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 25, and 26, Block 16;
- Lots 3,4,5,19, Block 17;
- Lots 2 and 3, Block 19; and
- Lots 21 thru 28, Lots 30 thru 39, Lots 41 thru 47, and Lots 49 thru 62, Block 27;

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the

OT 29282 A



File No. 990

6.1298

Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The Real Estate and the additional property above described are hereinafter referred to as the "Mortgaged Property".

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

A. Payment of the principal sum of One Million Three Hundred Thousand and 00/100ths Dollars (\$1,300,000.00), evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and release fees according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every other obligation, covenant and agreement of Trustor in the Promissory Note, other than as set forth in A. above.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor contained herein, incorporated herein by reference or contained in any other "Loan Document," as defined in the Promissory Note or in any other agreement now or hereafter at any time given by Trustor to secure any indebtedness or obligation hereby secured, or any part thereof.

D. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

E. Payment of future advances necessary to protect the Mortgaged Property.

F. Payment of future advances to be made at the option of Trustor and Beneficiary.

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

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Mortgaged Property, subject only to the title exceptions enumerated in the title insurance policy issued to Beneficiary in connection with the loan secured hereby.

2. **Maintenance:** To keep the Mortgaged Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof, to comply with the provisions of restrictions affecting the Mortgaged Property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon

OPPD Form No. 10-10-2

Res. Blanket

11 226

RIGHT-OF-WAY EASEMENT

BUCCANEER BAY, INC.

Owner(s) of the real estate described below, and hereafter referred to as "Grantor(s), in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant to the OMAHA PUBLIC POWER DISTRICT, a public corporation, its successors and assigns, and the \_\_\_\_\_, a corporation, its successors and assigns, collectively referred to as "Grantees", a permanent right-of-way easement to install, operate, maintain, repair, replace and renew its electric and telephone facilities over, upon, above, along, under, in and across the following described real estate, to wit:

Lots One C (1C), Two C (2C), Three C (3C), and Six C (6C) and Lots One A (1A), Two A (2A), Three A (3A), and Four A (4A) of Buccaneer Bay Addition, an addition as surveyed, platted, and recorded in Cass County, Nebraska.

Doc # 226  
FILED FOR RECORD 8-29-75 AT 10:15 A.M. IN BOOK 17 OF Main  
PAGE 544 REGISTER OF DEEDS, CASS CO., NEBR. \$ 5.00  
*Betty Philpat*

COMPARED

\*Lincoln Telephone & Telegraph Company

CONDITIONS:

- (a) Where Grantees' facilities are constructed, Grantees shall have the right to survey, construct, reconstruct, relocate, alter, inspect, repair, replace, add to, maintain and operate, at any time, service lines, poles, wires, cables, crossarms, guys and anchors and other instrumentalities for the carrying and transmission of electric current for light, heat and power and for the transmission of signals and sound of all kinds and the reception thereof, including all services of the Grantees to the residence on the above described real estate, over, upon, along, above, under, in and across a strip of land Sixteen feet (16') in width, being Eight feet (8') on each side of and parallel to facilities as constructed by Grantees.
- (b) The Grantees shall have the right of ingress and egress across the Grantor's property for any purpose hereinbefore granted. Such ingress and egress shall be exercised in a reasonable manner.
- (c) Grantor, its heirs, successors or assigns, covenant that at no time will any buildings, structures, pipelines or other property, except walks or driveways be erected, constructed, used or placed on or below the surface of said land where Grantees' facilities have been constructed.
- (d) Grantees shall restore the surface of the soil excavated for any purpose hereunder to the original contour thereof as near as may be and to repair or replace the surface of any walks or driveways which may have been disturbed for any purpose hereunder as near as may be.
- (e) It is further agreed Grantor has lawful possession of said real estate, good, right and lawful authority to make such conveyance and that his/her its/their heirs, executors, administrators, successors or assigns shall warrant and defend the same and will indemnify and hold harmless the Grantees forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this conveyance.

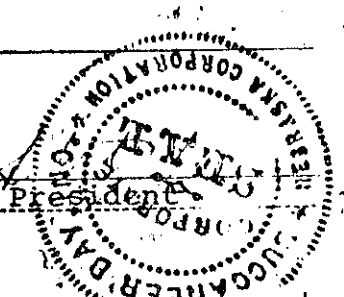
WITNESS my hand and Notarial Seal this 22 day of July 1975.

ATTEST:

ATTEST:

BUCCANEER BAY, INC.

By: *Sterling R. Flott*  
Grantor(s)



STATE OF  
COUNTY OF

STATE OF  
COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me the undersigned, a Notary Public in and for said County, personally came \_\_\_\_\_

On this 22 day of July before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_

Sterling R. Flott, President  
of Buccaneer Bay, Inc.

President of \_\_\_\_\_ personally to me known to be the identical person(s) who signed the foregoing instrument as grantor(s) and who acknowledged the execution thereof to be \_\_\_\_\_ voluntary act and deed for the purpose therein expressed.

personally to me known to be the identical person(s) and who acknowledged the execution thereof to be his \_\_\_\_\_ voluntary act and deed for the purpose therein expressed.

Witness my hand and Notarial Seal at \_\_\_\_\_ in said County the day and year last above written.

Witness my hand and Notarial Seal the date above written.

NOTARY PUBLIC



DIANA L. ORR  
General Notary State of Neb.  
My Commission Expires  
May 24, 1979

*Diana L. Orr*  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Recorded in Misc. Book No. \_\_\_\_\_ at Page No. \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Section \_\_\_\_\_ Township \_\_\_\_\_ North, Range \_\_\_\_\_ East Saleman CODE Engineer Ferry Est. # 81000 U.O. # 6200  
Section 28, 32, 33, 34, T13N, R13E  
Section 4, 5, T12N, R13E

#431

COMPARED

FILED FOR RECORD 12-19-97 AT 10:14 A.M.  
IN BOOK 166 OF Deed PAGE 456  
REGISTER OF DEEDS, CASS CO., NE Patricia Manning  
Dee #431 \$4950

NEBRASKA DOCUMENTARY  
STAMP TAX  
DEC 19 1997  
\$ Ep #2 BY Pm

**QUITCLAIM DEED**

Bay Hills Limited Partnership, a Nebraska limited partnership, in consideration of One Dollar (\$1.00) and other good and valuable consideration received from Grantee, Sanitary and Improvement District No. 5 of Cass County, Nebraska, quitclaims to Grantee the following-described real estate, (as defined in Neb. Rev. Stat. §76-201):

Island Drive, Shoreline Circle, Lakeside Circle, Waterside Circle, Bay Circle, Lakeview Circle and Fountain Circle, including asphaltic street surfacing, concrete curbs and gutters, water mains with valves and fire hydrants, sanitary sewer mains with manholes, sewer service stubouts and storm sewer inlets, all Block 27 Replat, Buccaneer Bay, a subdivision as surveyed, platted and recorded in Cass County, Nebraska.

Executed: December 17, 1997.

BAY HILLS LIMITED PARTNERSHIP,

By: W. L. Morrison, Jr.  
W. L. MORRISON, JR., President of  
Dodge Land Co., General Partner of  
Bay Hills Limited Partnership

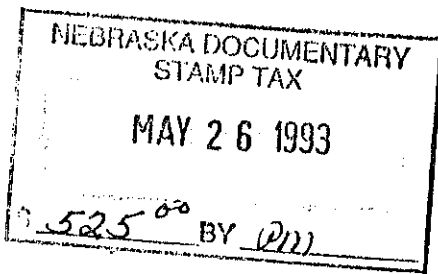
STATE OF NEBRASKA )  
                  Cass ) ss.  
COUNTY OF DOUGLAS )

The foregoing Quitclaim deed was acknowledged before me on this 17 day of December, 1997 by W. L. MORRISON, JR., President of Dodge Land Co., General Partner of Bay Hills Limited Partnership.

Steven J. Olson  
NOTARY PUBLIC

GENERAL NOTARY State of Nebraska  
STEVEN J. OLSON  
My Comm. Exp. March 2, 1998

x



FILED FOR RECORD 5-26-93 AT 2:04 P.M.  
RECORD 155 OF deed PAGE 393  
REGISTER OF DEEDS, CASS CO., NE  
Doc # 605 \$256.00

COMPARED

## CORPORATION SPECIAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, That Dodge Land Co., a Corporation organized and existing under the laws of the State of Nebraska (hereinafter called "Grantor"), in consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey and confirm unto Bay Hills Limited Partnership, a Nebraska limited partnership (hereinafter called "Grantee"), the real estate situated in the County of Cass and State of Nebraska, described as follows:

- Lots 5, 9, and 12, Block 1;
- Lots 1, 12, 13, and 14, Block 2;
- Lots 1, 2, 5, 6, 18, and 23, Block 3; 20,
- Lots 6, 8 through 15, inclusive, and Lots 17 through 21, inclusive, Block 4; ALL
- Lots 1, 4, 6, 7, 9, 11, 19, 21 through 24, inclusive, and Lots 28, 29, 31, 33 through 36, inclusive, and Lots 38 through 41, inclusive, Block 5; 14,
- Lots 1 through 19, inclusive, 21, 23, 24, 26, and Lots 29 through 31, inclusive, Block 6;
- Lots 1 through 36, inclusive, Block 7;
- Lots 7 through 26, inclusive, Block 8;
- Lots 1 through 11, inclusive, Block 9;
- Lots 16 through 48, inclusive, Block 11;
- Lots 1 through 16, inclusive, Block 12;
- Lots 1 through 43, inclusive, Block 13;
- Lots 1 through 10, inclusive, Block 14;
- Lots 1 through 73, inclusive, Block 15; 60-62, 64, 67, 68, 71, 72
- Lots 2 through 35, inclusive, and Lots 37, 39, and 41, Block 16; 8, 16, 17, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 33;
- Lots 1, 8, 10, 12, 15, 16, 17, and 23 through 28, inclusive, Block 17; 3, 4, 5, 19,
- Lots 2, 3, and 5, Block 18;
- Lots 5, 6, and 8, Block 19;
- Lots 1, 2, 3, 5, 7, 9, and 10, Block 20;
- Lots 1, 18, and 19, Block 21;
- Lots 17 and 18, Block 22;
- Lots 13 through 28, inclusive, Block 23;
- Lots 1 through 9, inclusive, and part of Lot 10, Block 24;
- Lots 2 through 58, inclusive, 1st Addition;
- Lot 1A;
- Lot 2A;
- Lot 4A, EXCEPT that part more particularly described as follows:  
Beginning at the Northeast corner of Lot 4A, said corner being common with Lots 1G and 6C, Buccaneer Bay; thence South 38°39'35" East (bearings based on the Buccaneer Bay recorded plat) for 50.85 feet along the Easterly line of said Lot 4A; thence South 17°43'07" East for 286.41 feet; thence South 48°31'12" West for 210.76 feet; thence South 25°33'21" West for 111.73 feet; thence South 88°18'48" West for 25.82 feet to the Westerly line of said Lot 4A; thence North 38°59'42" West for 356.01 feet to the Northwesterly corner of said Lot 4A; thence North 40°57'10" East for 300.56 feet to an angle point in the Northerly line of said Lot 4A; thence North 70°20'46" East for 148.66 feet to the point of beginning; and
- Lot 1B;
- Lot 2C;
- Lot 3C, EXCEPT that part more particularly described as follows:  
Beginning at the Southwesterly corner of Lot 3C, said point being on the North right-of-way line of Buccaneer Boulevard and common with the Southeast corner of Outlot H, Buccaneer Bay; thence North 8°55'04" East (bearings based on the Buccaneer Bay recorded plat) for 270.72 feet to the Northwesterly corner of said Lot 3C; thence South 87°03'51" East for 301.64 feet along the North line of said Lot 3C; thence South 8°55'04" West for 224.42 feet parallel with and 300.0 feet East of the West line of Lot 3C to the curved Southerly line of said Lot 3C; thence along a curve to the left (having a radius of 454.0 feet and a long chord bearing South 86°36'07" West for 271.51 feet) for an arc distance of 275.73 feet along the Southerly lot line of said Lot 3C; thence South 69°12'12" West for 40.00 feet to the point of beginning; and
- Lot 4C;
- Lot 5C;
- Lot 6C, EXCEPT that part more particularly described as follows:  
Commencing at the most Northerly corner of said Lot 6C; thence South 35°53'27" West (bearings based on the Buccaneer Bay recorded plat) for 241.47 feet along the Northwesterly line of said Lot 6C to the True Point of Beginning; thence South 17°43'07" East for 196.07 feet to the Northwesterly line of Lot 1G, Buccaneer Bay; thence South 34°30'31" West for 22.99 feet along said Northwesterly line of Lot 1G to the Northeasterly corner of Lot 4A, Buccaneer Bay; thence South 70°20'46" West for 148.66 feet to an angle point in the Northwesterly line of said Lot 4A; thence North 2°32'41" East for 135.13 feet to an angle point in the Northwesterly line of Lot 6C, Buccaneer Bay; thence North 35°53'27" East for 149.01 feet to the True Point of Beginning; and
- Lot 1D;
- Outlot A;

Outlot B, EXCEPT that part more particularly described as follows:

Commencing at the North Quarter of Section 4, Township 12 North, Range 13 East of the 6th P.M., Cass County, Nebraska; thence North 89°54'46" West a distance of 33 feet to a point on the East line of said Lot B and the True Point of Beginning; thence South 00°02'46" West a distance of 7.83 feet; thence South 89°55'00" West along the South line of said Lot B a distance of 284 feet; thence North 00°02'46" East a distance of 40.83 feet; thence South 89°55'00" East a distance of 284 feet to a point on the aforementioned East line; thence South 00°02'46" West a distance of 33 feet to the True Point of Beginning;

Outlot C;

Part of Outlot D, lying within the Original Government Lots 3, 4, and 5 North of Railroad in Section 33, Township 13 North, Range 13 East of the 6th P.M.;

Part of Outlot E, lying within the Original Government Lot 2 of Section 34, Township 13 North, Range 13 East of the 6th P.M.;

Outlot H;

Outlot J;

Outlot K;

Outlot L;

Outlot M;

Outlot N;

Outlot O, EXCEPT that part more particularly described as follows:

Beginning at the Northeast corner of said Outlot "O"; thence South 38°59'42" East (bearings based on the Buccaneer Bay recorded plat) for 356.01 feet along the Easterly line of said outlot "O"; thence South 88°18'48" West for 235.79 feet; thence North 3°54'44" West for 261.12 feet to the Northerly line of said Outlot "O"; thence North 51°53'33" East for 37.47 feet to the point of beginning;

Outlot T.

All in Buccaneer Bay, a Subdivision, as surveyed, platted and recorded, in Cass County, Nebraska,

together with all buildings and improvements located thereon, and together with the tenements, hereditaments, privileges, easements and appurtenances to the same belonging and all the estate, title, right, claim or demand whatsoever of said Grantor of, in or to the same or any part thereof.

TO HAVE AND TO HOLD the above-described premises, with the appurtenances, unto said Grantee and unto its successors and assigns, forever, and said Grantor, for itself and its successors and assigns, does covenant with said Grantee and with its successors and assigns, that it is lawfully seized of said premises; that they are free from encumbrances created by, through or under said Grantor, except (i) real estate taxes, tax sales, tax certificates, personal property taxes and weed control liens, if any, including any penalties and interest thereon, and (ii) plats, dedications, rights-of-way, easements, agreements, covenants, conditions, restrictions and plans of adjustment of record, if any (collectively "Permitted Encumbrances"), and (iii) subject to that certain Deed of Trust dated April 22, 1993 among Dodge Land Co., a Nebraska corporation, Trustor and First National Bank of Omaha, a national banking association, Omaha, Nebraska, Trustee and Beneficiary, in the original amount of \$500,000.00 recorded in Book 238 at Page 653 of the Mortgage Records of Cass County, Nebraska and encumbering a portion of the property herein conveyed, which Deed of Trust the Grantee herein assumes and agrees to pay; that said Grantor has good right and lawful authority to sell the same; and that said Grantor and its successors and assigns shall warrant and defend the same unto said Grantee and its successors and assigns, forever, against the lawful claims of all persons whomsoever claiming by, through or under said Grantor, except those claiming under Permitted Encumbrances, but against no others.

IN WITNESS WHEREOF, said Grantor has caused this instrument to be executed this 19th day of May, 1993.

GRANTOR:

DODGE LAND CO.,  
a Nebraska Corporation

BY: W. L. Morrison, Jr.  
W. L. Morrison, Jr. President

State of Nebraska )  
                          )ss.  
County of Douglas )

The foregoing instrument was acknowledged before me on May 19, 1993, by W. L. Morrison, Jr. President of Dodge Land Co., a Nebraska Corporation, Grantor.

GENERAL NOTARY-State of Nebraska  
BARBARA M. HAMMOND  
My Comm. Exp. April 11, 1996

Barbara M. Hammond  
Notary Public

#579

6.1298

File No.990

COPY

FILED FOR RECORD 6-22-98 AT 9:46 A. M.  
IN BOOK 316 OF 114 PAGE 30  
REGISTER OF DEEDS, CASS CO., NE Patricia Manning  
Doc # 579 " 242 50

WHEN RECORDED, PLEASE RETURN TO:  
First National Bank of Omaha  
11404 West Dodge Road  
Omaha, NE 68154  
ATTN: Mortgage Loan Department

DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 12TH day of June, 1998, among Bay Hills Limited Partnership, a Nebraska limited partnership, as Trustor, First National Bank of Omaha, a national banking association, as Trustee, and First National Bank of Omaha, a national banking association, Omaha, Nebraska, as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, the following described Real Estate located in Cass County Nebraska:

Lots 1R and 2R, Lots 4R thru 17R, and Lots 25R thru 40R, Buccaneer Bay First Addition Administrative Replat; and

the following Lots located in Buccaneer Bay, a Subdivision, as surveyed, platted and recorded:

- Lot 20, Block 3;
- Lots 5 and 14, Block 5;
- Lots 1 thru 36, Block 7;
- Lots 1 thru 43, Block 8;
- Lots 1 thru 11, Block 9;
- Lots 1 thru 9, Block 10;
- Lots 1 thru 48, Block 11;
- Lots 1 thru 16, Block 12;
- Lots 1 thru 43, Block 13;
- Lots 2 thru 10, Block 14;
- Lots 1 thru 18, Lots 20 thru 27, and Lots 29 thru 59, Block 15;
- Lots 2, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 25, and 26, Block 16;
- Lots 3,4,5,19, Block 17;
- Lots 2 and 3, Block 19; and
- Lots 21 thru 28, Lots 30 thru 39, Lots 41 thru 47, and Lots 49 thru 62, Block 27;

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the

OT 29282 A





6.1298

File No.990

Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The Real Estate and the additional property above described are hereinafter referred to as the "Mortgaged Property".

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

A. Payment of the principal sum of One Million Three Hundred Thousand and 00/100ths Dollars (\$1,300,000.00), evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and release fees according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every other obligation, covenant and agreement of Trustor in the Promissory Note, other than as set forth in A. above.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor contained herein, incorporated herein by reference or contained in any other "Loan Document," as defined in the Promissory Note or in any other agreement now or hereafter at any time given by Trustor to secure any indebtedness or obligation hereby secured, or any part thereof.

D. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

E. Payment of future advances necessary to protect the Mortgaged Property.

F. Payment of future advances to be made at the option of Trustor and Beneficiary.

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

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Mortgaged Property, subject only to the title exceptions enumerated in the title insurance policy issued to Beneficiary in connection with the loan secured hereby.

2. **Maintenance:** To keep the Mortgaged Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof, to comply with the provisions of restrictions affecting the Mortgaged Property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon

SOUTH OMAHA PRODUCTION CREDIT ASSN.

Owner(s)

of the real estate described as follows, and hereafter referred to as "Grantor",

Lot Eight (8), Block Five (5), Buccaneer Bay, an addition to Cass County, Nebraska, as surveyed, platted and recorded.

Doc # 163

FILED FOR RECORD 11-19-1976 AT 9:32 A. M. IN BOOK 19 OF Misc

PAGE 93 REGISTER OF DEEDS, CASS CO., NEBR.

Betty Philpot

# 3.25

COMPARED

in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant to the OMAHA PUBLIC POWER DISTRICT, a public corporation, its successors and assigns, and the LINCOLN TELEPHONE & TELEGRAPH, a corporation, its successors and assigns, collectively referred to as "Grantees", a permanent right of way easement to install operate, maintain, repair, replace, and renew its electric and telephone facilities over, upon, above, along, under, in and across the following described real estate, to wit:

A strip of land Ten feet (10') in width, lying adjacent to and parallel to the rear line of Lot Eight (8), Block Five (5), Buccaneer Bay, an addition to Cass County, Nebraska, as surveyed, platted and recorded.

CONDITIONS:

- (a) Where Grantee's facilities are constructed Grantees shall have the right to operate, maintain, repair, replace and renew said facilities consisting of poles, wires, cables, fixtures, guys and anchors and other instrumentalities within a strip of land as indicated above, together with the right to trim or remove any trees along said line so as to provide a minimum clearance from the overhead facilities of at least Twelve feet (12').
(b) The Grantees shall have the right of ingress and egress across the Grantor's property for any purpose hereinbefore granted. Such ingress and egress shall be exercised in a reasonable manner.
(c) Where Grantee's facilities have been installed, no trees, permanent buildings or other structures shall be placed in or encroach the easement and no change of grade elevation or any excavations shall be made therein without prior written approval of the Grantees, but the same may be used for landscaping or other purposes that do not then or later interfere with the granted easement uses.
(d) It is further agreed that Grantor has lawful possession of said real estate, good, right and lawful authority to make such conveyance and that his/her its/their heirs, executors, administrators, successors and assigns shall warrant and defend the same and will indemnify and hold harmless the District forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this conveyance.

IN WITNESS WHEREOF, the parties hereto have signed their names and caused the execution of this instrument this \_\_\_ day of \_\_\_, 19\_\_

South Omaha P.C.A.
By Howard K. Holsten Pres.

STATE OF Nebraska
COUNTY OF Douglas
On this 14 day of October, 1976, before me the undersigned, a Notary Public in and for said County, personally came Howard K. Holsten, President of South Omaha Production Credit Assn. personally to me known to be the identical person(s) who signed the foregoing instrument as grantor(s) and who acknowledged the execution thereof to be his voluntary act and deed for the purpose therein expressed.

STATE OF
COUNTY OF
On this \_\_\_ day of \_\_\_, 19\_\_, before me the undersigned, a Notary Public in and for said County and State, personally appeared
personally to me known to be the identical person(s) and who acknowledged the execution thereof to be \_\_\_ voluntary act and deed for the purpose therein expressed.

CLARA SCHRAEDER
GENERAL NOTARY
State of Nebraska
Witness my hand and Notarial Seal at Omaha, Nebraska, this 8th day of March, 1977.
Clara Schraeder
NOTARY PUBLIC

Witness my hand and Notarial Seal the date above written.
NOTARY PUBLIC

My Commission expires: March 8, 1977

My Commission expires: \_\_\_\_\_

Distribution Engineer B.D. Date 11/5/76 Land Rights and Services R.W.P. Date 11-4-76

Recorded in Misc. Book No. \_\_\_ at Page No. \_\_\_ on the \_\_\_ day of \_\_\_, 19\_\_

Section \_\_\_ Township \_\_\_ North, Range \_\_\_ East Salesman Kuhn Engineer \_\_\_ Est. # \_\_\_ N.O. # \_\_\_

# 525

First National Bank of Omaha  
Mortgage Loan Department  
One First National Center  
Omaha, Nebraska 68102

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

**THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS**, made this 22 day of April, 19 93, among  
DODGE LAND CO., a Nebraska corporation,  
as Trustor,  
FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska,  
as Trustee, and  
FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska,  
as Beneficiary:

FILED FOR RECORD 04-27-93 AT 8:02 A.M.  
IN BOOK 238 OF MT6 PAGE 653

WITNESSETH: REGISTER OF DEEDS, CASS CO., NE Patricia M. ...  
Doc. # 525 \$ 102.50

That Trustor irrevocably grants, transfer and assigns to Trustee in trust, with power of sale, the following described Real Estate:

See Exhibit "A" attached hereto and by this reference  
Incorporated herein.

**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR  
INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST  
IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.**

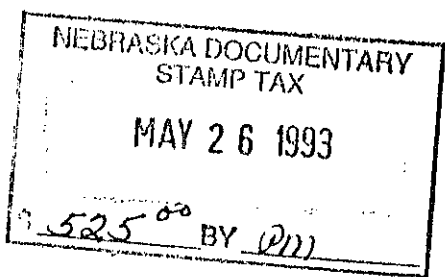
together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The property so conveyed hereunder is hereinafter referred to as "such property", and in the Promissory Note secured hereby the "Mortgaged Property".

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

- A. Payment of the principal sum of **Five Hundred Thousand Dollars (\$500,000.00)** evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.
- B. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor incorporated by reference or contained herein or in any other security agreement or deed of trust at any time given to secure any indebtedness hereby secured, or any part thereof, including an Environmental Indemnity Agreement of even date herewith.
- C. Payment of all fees and charges of Beneficiary, whether or not set forth herein.
- D. Payment of future advances necessary to protect such property.
- E. Payment of future advances to be made at the option of Trustor and Beneficiary.

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

- 1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to such property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whatsoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon such property. See Additional Provisions attached hereto.
- 2. **Maintenance:** To keep such property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of restrictions affecting such property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon such property in violation of law; to do all other acts in a timely and proper manner which from the character or use of such property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.
- 3. **Construction of Improvements:** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against such property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed Improvements promptly, (b) to complete same in accordance with plans and specifications as approved by Beneficiary, (c) to comply with all of the terms of any construction loan agreement between Trustor and Beneficiary, (d) to allow Beneficiary to inspect such property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same.



FILED FOR RECORD 5-26-93 AT 2:04 P.M.  
IN BOOK 155 OF deed PAGE 393  
REGISTER OF DEEDS CASS CO. NE  
Doc # 605 \$ 256.00

COMPARED

## CORPORATION SPECIAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, That Dodge Land Co., a Corporation organized and existing under the laws of the State of Nebraska (hereinafter called "Grantor"), in consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey and confirm unto Bay Hills Limited Partnership, a Nebraska limited partnership (hereinafter called "Grantee"), the real estate situated in the County of Cass and State of Nebraska, described as follows:

- Lots 5, 9, and 12, Block 1;
- Lots 1, 12, 13, and 14, Block 2;
- Lots 1, 2, 5, 6, 18, and 23, Block 3; 20,
- Lots 6, 8 through 15, inclusive, and Lots 17 through 21, inclusive, Block 4; ALL
- Lots 1, 4, 6, 7, 9, 11, 19, 21 through 24, inclusive, and Lots 28, 29, 31, 33 through 36, inclusive, and Lots 38 through 41, inclusive, Block 5; 14,
- Lots 1 through 19, inclusive, 21, 23, 24, 26, and Lots 29 through 31, inclusive, Block 6;
- Lots 1 through 36, inclusive, Block 7;
- Lots 7 through 26, inclusive, Block 8;
- Lots 1 through 11, inclusive, Block 9;
- Lots 16 through 48, inclusive, Block 11;
- Lots 1 through 16, inclusive, Block 12;
- Lots 1 through 43, inclusive, Block 13;
- Lots 1 through 10, inclusive, Block 14;
- Lots 1 through 73, inclusive, Block 15; 60-62, 64, 67, 68, 71, 72
- Lots 2 through 35, inclusive, and Lots 37, 39, and 41, Block 16; 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33;
- Lots 1, 8, 10, 12, 15, 16, 17, and 23 through 28, inclusive, Block 17; 3, 4, 5, 19,
- Lots 2, 3, and 5, Block 18;
- Lots 5, 6, and 8, Block 19;
- Lots 1, 2, 3, 5, 7, 9, and 10, Block 20;
- Lots 1, 18, and 19, Block 21;
- Lots 17 and 18, Block 22;
- Lots 13 through 28, inclusive, Block 23;
- Lots 1 through 9, inclusive, and part of Lot 10, Block 24;
- Lots 2 through 58, inclusive, 1st Addition;
- Lot 1A;
- Lot 2A;
- Lot 4A, EXCEPT that part more particularly described as follows:  
Beginning at the Northeast corner of Lot 4A, said corner being common with Lots 1G and 6C, Buccaneer Bay; thence South 38° 39' 35" East (bearings based on the Buccaneer Bay recorded plat) for 50.85 feet along the Easterly line of said Lot 4A; thence South 17° 43' 07" East for 286.41 feet; thence South 48° 31' 12" West for 210.76 feet; thence South 25° 33' 21" West for 111.73 feet; thence South 88° 18' 48" West for 25.82 feet to the Westerly line of said Lot 4A; thence North 38° 59' 42" West for 356.01 feet to the Northwestern corner of said Lot 4A; thence North 40° 57' 10" East for 300.56 feet to an angle point in the Northerly line of said Lot 4A; thence North 70° 20' 46" East for 148.66 feet to the point of beginning; and
- Lot 1B;
- Lot 2C;
- Lot 3C, EXCEPT that part more particularly described as follows:  
Beginning at the Southwesterly corner of said Lot 3C, said point being on the North right-of-way line of Buccaneer Boulevard and common with the Southeast corner of Outlot H, Buccaneer Bay; thence North 8° 55' 04" East (bearings based on the Buccaneer Bay recorded plat) for 270.72 feet to the Northwesterly corner of said Lot 3C; thence South 87° 03' 51" East for 301.64 feet along the North line of said Lot 3C; thence South 8° 55' 04" West for 224.42 feet parallel with and 300.0 feet East of the West line of Lot 3C to the curved Southerly line of said Lot 3C; thence along a curve to the left (having a radius of 454.0 feet and a long chord bearing South 86° 36' 07" West for 271.51 feet) for an arc distance of 275.73 feet along the Southerly lot line of said Lot 3C; thence South 69° 12' 12" West for 40.00 feet to the point of beginning; and
- Lot 4C;
- Lot 5C;
- Lot 6C, EXCEPT that part more particularly described as follows:  
Commencing at the most Northerly corner of said Lot 6C; thence South 35° 53' 27" West (bearings based on the Buccaneer Bay recorded plat) for 241.47 feet along the Northwesterly line of said Lot 6C to the True Point of Beginning; thence South 17° 43' 07" East for 196.07 feet to the Northwesterly line of Lot 1G, Buccaneer Bay; thence South 34° 30' 31" West for 22.99 feet along said Northwesterly line of Lot 1G to the Northeasterly corner of Lot 4A, Buccaneer Bay; thence South 70° 20' 46" West for 148.66 feet to an angle point in the Northwesterly line of said Lot 4A; thence North 2° 32' 41" East for 135.13 feet to an angle point in the Northwesterly line of Lot 6C, Buccaneer Bay; thence North 35° 53' 27" East for 149.01 feet to the True Point of Beginning; and
- Lot 1D;
- Outlot A;

Outlot B, EXCEPT that part more particularly described as follows:

Commencing at the North Quarter of Section 4, Township 12 North, Range 13 East of the 6th P.M., Cass County, Nebraska; thence North 89° 54' 46" West a distance of 33 feet to a point on the East line of said Lot B and the True Point of Beginning; thence South 00° 02' 46" West a distance of 7.83 feet; thence South 89° 55' 00" West along the South line of said Lot B a distance of 284 feet; thence North 00° 02' 46" East a distance of 40.83 feet; thence South 89° 55' 00" East a distance of 284 feet to a point on the aforementioned East line; thence South 00° 02' 46" West a distance of 33 feet to the True Point of Beginning;

Outlot C;

Part of Outlot D, lying within the Original Government Lots 3, 4, and 5 North of Railroad in Section 33, Township 13 North, Range 13 East of the 6th P.M.;

Part of Outlot E, lying within the Original Government Lot 2 of Section 34, Township 13 North, Range 13 East of the 6th P.M.;

Outlot H;

Outlot J;

Outlot K;

Outlot L;

Outlot M;

Outlot N;

Outlot O, EXCEPT that part more particularly described as follows:

Beginning at the Northeast corner of said Outlot "O"; thence South 38° 59' 42" East (bearings based on the Buccaneer Bay recorded plat) for 356.01 feet along the Easterly line of said outlot "O"; thence South 88° 18' 48" West for 235.79 feet; thence North 3° 54' 44" West for 261.12 feet to the Northerly line of said Outlot "O"; thence North 51° 53' 33" East for 37.47 feet to the point of beginning;

Outlot T.

All in Buccaneer Bay, a Subdivision, as surveyed, platted and recorded, in Cass County, Nebraska,

together with all buildings and improvements located thereon, and together with the tenements, hereditaments, privileges, easements and appurtenances to the same belonging and all the estate, title, right, claim or demand whatsoever of said Grantor of, in or to the same or any part thereof.

TO HAVE AND TO HOLD the above-described premises, with the appurtenances, unto said Grantee and unto its successors and assigns, forever, and said Grantor, for itself and its successors and assigns, does covenant with said Grantee and with its successors and assigns, that it is lawfully seized of said premises; that they are free from encumbrances created by, through or under said Grantor, except (i) real estate taxes, tax sales, tax certificates, personal property taxes and weed control liens, if any, including any penalties and interest thereon, and (ii) plats, dedications, rights-of-way, easements, agreements, covenants, conditions, restrictions and plans of adjustment of record, if any (collectively "Permitted Encumbrances"), and (iii) subject to that certain Deed of Trust dated April 22, 1993 among Dodge Land Co., a Nebraska corporation, Trustor and First National Bank of Omaha, a national banking association, Omaha, Nebraska, Trustee and Beneficiary, in the original amount of \$500,000.00 recorded in Book 238 at Page 653 of the Mortgage Records of Cass County, Nebraska and encumbering a portion of the property herein conveyed, which Deed of Trust the Grantee herein assumes and agrees to pay; that said Grantor has good right and lawful authority to sell the same; and that said Grantor and its successors and assigns shall warrant and defend the same unto said Grantee and its successors and assigns, forever, against the lawful claims of all persons whomsoever claiming by, through or under said Grantor, except those claiming under Permitted Encumbrances, but against no others.

IN WITNESS WHEREOF, said Grantor has caused this instrument to be executed this 19th day of May, 1993.

GRANTOR:

DODGE LAND CO.,  
a Nebraska Corporation

BY: W. L. Morrison, Jr.  
W. L. Morrison, Jr. President

State of Nebraska )  
                                  )ss.  
County of Douglas )

The foregoing instrument was acknowledged before me on May 19, 1993, by W. L. Morrison, Jr. President of Dodge Land Co., a Nebraska Corporation, Grantor.

 GENERAL NOTARY-State of Nebraska  
BARBARA M. HAMMOND  
My Comm. Exp. April 11, 1996

Barbara M. Hammond  
Notary Public