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Cherry Hills 4328
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Still Open
3/14/98

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 4th day of April, 19 94, among
HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, whose mailing address is 3405 North
132nd Street, Omaha, Nebraska 68164
as Trustor,

FIRST NATIONAL BANK OF OMAHA, a national banking association, whose mailing address is
One First National Center, Omaha, Nebraska 68102
as Trustee, and

FIRST NATIONAL BANK OF OMAHA, a national banking association, whose mailing address is
One First National Center, Omaha, Nebraska 68102
as Beneficiary:

WITNESSETH:

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 CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT WITHIN THE PURVIEW
OF THE NEBRASKA CONSTRUCTION LIEN ACT (§§52-125 TO 52-159, R.R.S. 1943), AND SECURES
AN OBLIGATION WHICH TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE
REAL ESTATE IN WHICH THIS SECURITY INTEREST IS GIVEN AND IS A CONSTRUCTION SECURITY
INTEREST.

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A FEE 30⁵⁰ R 33-16-18⁸
DEL C/O FB01-60000
LEGAL PG SCAN W/FV

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GEORGE J. DUGLEWICZ
REGISTER OF DEEDS
SARASOTA COUNTY, FL

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".

FOR THE PURPOSE OF SECURING:

- A. Payment of the principal sum of Five Hundred and Sixty-Six Thousand Five Hundred Dollars 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.
- 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.
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.

Cherry Hills

EXHIBIT "A"

LEGAL DESCRIPTION

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PARCEL I

That part of the South Half of the East Half of the Northwest Quarter of Section 33, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska described as follows: Commencing at the Southeast corner of said South Half; thence North $00^{\circ}05'42''$ East 80.00 feet on the East line of said South Half to the Point of Beginning; thence continuing North $00^{\circ}05'42''$ East 1243.59 feet on the East line of said South Half to the Northeast corner of said South Half; thence South $89^{\circ}42'38''$ West 1320.67 feet on the North line of said South half to the Northwest corner of said South Half; thence South 1290.82 feet on the West line of said South Half thence North $89^{\circ}42'00''$ East 631.14 feet on a line 33.00 feet North of and parallel with the South line of said South Half and on the North line of Military Road; thence North $00^{\circ}18'00''$ West 7.00 feet on the North line of Military Road; thence North $89^{\circ}42'00''$ East 534.90 feet on a line 40.00 feet North of and parallel with the South line of said South Half and on the North line of Military Road; thence North $75^{\circ}01'55''$ East 157.96 feet on the North line of Military Road to the Point of Beginning;

Except that part described as follows; Commencing at the Southwest corner of said South Half; thence North (assumed bearing) 33.00 feet on the West line of said East Half; thence North $89^{\circ}42'00''$ East 739.3 feet on a line 33.00 feet North of and parallel with the South line of said East Half to the Point of Beginning; thence North $00^{\circ}18'00''$ West 452.60 feet; thence North $89^{\circ}42'00''$ East 100.00 feet; thence South $00^{\circ}18'00''$ East 452.60 feet; thence South $89^{\circ}42'00''$ West 100.00 feet on a line 33.00 feet North of and parallel with the South line of said East Half to the Point of Beginning.

PARCEL II

That part of the South Half of the East Half of the Northwest Quarter of Section 33, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the Southwest corner of said South Half; thence North (assumed bearing) 33.00 feet on the West line of said East Half; thence North $89^{\circ}42'00''$ East 739.30 feet on a line 33.00 feet North of and parallel with the South line of said East Half to the Point of Beginning; thence North $00^{\circ}18'00''$ West 452.60 feet; thence North $89^{\circ}42'00''$ East 100.00 feet; thence South $00^{\circ}18'00''$ East 452.60 feet thence South $89^{\circ}42'00''$ West 100.00 feet on a line 33.00 feet North of and parallel with the South line of said East Half to the Point of Beginning.

(SENW)