

4714

ENVIRONMENTAL INDEMNITY AGREEMENT

This Environmental Indemnity Agreement ("Indemnity"), dated December 1, 1991, is made by Centre Terrace Limited Partnership, a Nebraska limited partnership, Thomas C. Smith, Thomas D. Hayes, J.C. Brager and John Breslow, (hereinafter collectively "Borrower") and in favor of NORWEST BANK NEBRASKA, N.A., a federal banking institution ("Lender").

PRELIMINARY STATEMENTS

Borrower has requested a loan from Lender in the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) ("Loan"), to be evidenced by that certain note of Borrower to Lender dated the 1st day of December, 1991, ("Note"), in the principal amount set forth above.

The Loan will finance a business/real estate project owned by Borrower at the location commonly known as: Centre Terrace and legally described as follows ("Premises"), to wit:

Lots 3, 4, and 10, Block 98, Lincoln, Lancaster County, Nebraska.

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Lots 8 and 9, Block 98, original Lincoln, Lincoln, Lancaster County, Nebraska.

and will be secured, in part, by a Deed of Trust and Assignment of Rents dated December 1, 1991, from Borrower to Lender, as Trustee and Beneficiary (the "Mortgage"), together with the collateral documents, as fully set forth in Section 1.5 of the Restated Loan Agreement executed of even date herewith.

To induce Lender to make the Loan, Borrower has agreed to enter into this Indemnity.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Section 1. Definitions. Capitalized terms used in this Indemnity and not otherwise defined are used with the meanings set forth in the Mortgage. As used in this Indemnity, the following terms shall have the following meanings.

- (a) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time (42 U.S.C. §§ 29601, et seq.);
- (b) "Code" means any applicable present and future state and local law, rule, regulation or ordinance, as amended from time to time, including, but not limited to, the following:

The Hazardous Materials Transport Act, as amended, 49 U.S.C. S^s 1801, et seq.;

The Nebraska Environmental Protection Act, as amended, §§ 81-1501, et seq., R.R.s. 1943;

The Nebraska Asbestos Control Act, as amended, § 71-6301 et seq., R.R.s. 1943;

The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; and,

The Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.

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- (c) "Environmental Activity" means any actual, proposed or threatened storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Premises or otherwise relating to the Premises or the use of the Premises, or any other activity or occurrence that causes or would cause any such event to exist.
 - (d) "Environmental Requirement" means all requirements under all present and future federal, state and local laws (including CERCLA and the applicable provisions of the Code and regulations promulgated thereunder), rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any Hazardous Substance or Environmental Activity.
 - (e) "Hazardous Substance" means, at any time, (i) any "hazardous substance" as defined in § 101(14) of CERCLA [42 U.S.C. § 9601(14)] or applicable sections of the Code at such time; (ii) any "hazardous waste," "infectious waste" or "hazardous material" as defined in applicable sections, if any, of the Code at such time and (iii) any additional substances or materials which at such time are classified or considered to be hazardous or toxic, or otherwise regulated under the laws of the state in which the Property is located or any other applicable laws, rules or regulations relating to the Premises.
 - (f) "Indemnitee" means Lender and its subsidiaries, directors, officers, agents, attorneys, employees, participants, successors and assigns.
 - (g) "Use" means use, ownership, development, construction, maintenance, management, operation or occupancy.

Section 2. Representations and Warranties of Borrower. Borrower represents and warrants to Lender that:

- (a) Borrower is in compliance in all respects with all applicable Environmental requirements relating to the Premises and the use of the Premises, and Borrower has not engaged in any Environmental Activity, nor has any Environmental Activity otherwise occurred, in violation of any applicable Environmental Requirements;
- (b) No investigations, inquiries, orders, hearings, actions or other proceedings by or before any governmental agency are pending or threatened in connection with any Environmental Activity or alleged Environmental Activity;
- (c) Borrower has no liability, absolute or contingent, in connection with any Environmental Activity;
- (d) The Use of the Premises for their intended purpose will not result in any Environmental activity in violation of any applicable Environment Requirements; and,
- (e) Borrower has not engaged in any Environmental Activity, no Environmental Activity has otherwise occurred, and no notice, order, directive, complaint or other communication, written or oral, has been made or issued by any governmental agency or other person, entity or agency alleging the occurrence of any Environmental Activity in violation of any Environmental Requirements.

Section 3. Covenants of Borrower. Unless Lender otherwise consents in writing, Borrower shall at all times from the date of this Indemnity until the Note, together with accrued interest and any other sums due thereunder is paid in full, at its sole expense:

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- (a) Comply in all material respects with all applicable Environmental Requirements relating to the Premises and the Use of Premises, and not engage in or otherwise permit the occurrence of any Environmental Activity; and,
 - (b) Promptly following the discovery by Borrower, deliver to Lender notice of any event that would render any representation or warranty contained in Section 2 of this Indemnity incorrect in any respect if made at the time of such discovery.

Section 4. Indemnity by Borrower. Borrower shall indemnify, defend and save and hold harmless each Indemnitee from and against any and all losses, liabilities, damages, costs and expenses (including, but not limited to, loss of property value, or defects in title to the Premises, and the reasonable fees and disbursements of the Indemnitee's legal counsel and the reasonable charges of the Indemnitee's internal legal counsel) suffered or incurred by any Indemnitee as a result of:

- (a) The occurrence of any Environmental Activity or any failure of Borrower or any other person to comply with applicable Environmental Requirements relating to the Premises or the Use of the Premises;
- (b) Any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which has resulted or is alleged to have resulted directly or indirectly from any Environmental Activity relating to the Premises or Use of the Premises;
- (c) Any failure of any representation or warranty of Borrower set forth in Section 2 above to be correct in all respects as of the date of this Indemnity;
- (d) Any failure of Borrower to perform any covenant set forth in Section 3 above; or
- (e) Any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in Clauses (a) through (d) of this Section 4 or any allegations of any such matters.

Section 5. Costs and Expenses. Borrower shall pay to each Indemnitee all costs and expenses (including the reasonable fee and disbursements of Indemnitee's legal counsel and the reasonable charges of Indemnitee's internal legal counsel) incurred by any Indemnitee in connection with this Indemnity or the enforcement of the terms of this Indemnity.

Section 6. Survival of Indemnity. Borrower's obligations under this Indemnity shall survive the repayment of the Loan and the expiration or termination of the Note and any transfer of Borrower's title to the Premises (whether by sale or foreclosure of the Mortgage or by deed in lieu of foreclosure or otherwise).

Section 7. Security. This Indemnity and the obligations of Borrower under this Indemnity are secured by the Mortgage. In addition to all rights and remedies contained in this Indemnity; it shall be an Event of Default under the Mortgage if any representation or warranty of Borrower set forth in Section 2 hereof shall prove false or materially misleading or if Borrower shall fail to observe or perform any of the covenants set forth in Section 3 hereof.

Section 8. Notices. All notices, demands, requests, consents, approvals or communications required under this Indemnity shall be in writing and shall be deemed to have been properly given if sent by hand delivery, overnight courier or certified mail, postage prepaid, delivered to the parties at the following addresses:

4.

If to Borrower:

Centre Terrace Limited Partnership
c/o Consolidated Realty
1225 "L" Street
Lincoln, Nebraska 68508

If to Lender:

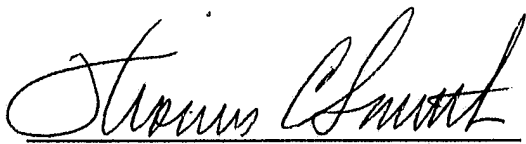
Norwest Bank Nebraska, N.A.
Commercial Real Estate
P.O. Box 3408
Omaha, Nebraska 68103

Attention: J. Kirk Hanson

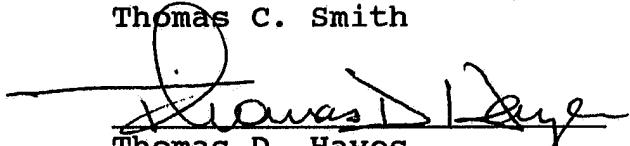
or to such other addresses as are designated by notice pursuant to this Section.

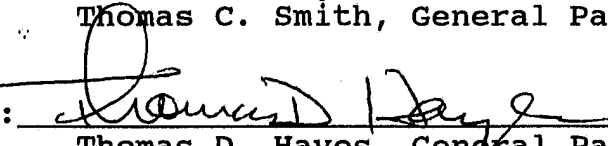
IN WITNESS WHEREOF, Borrower has executed this Indemnity on the date first set forth above.

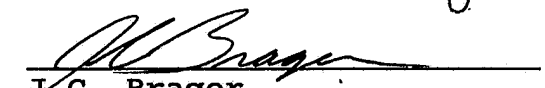
CENTRE TERRACE LIMITED PARTNERSHIP, A
Nebraska Limited Partnership,



Thomas C. Smith

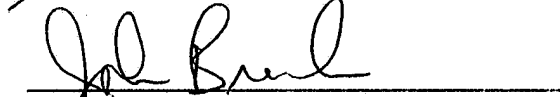
By: 
Thomas C. Smith, General Partner

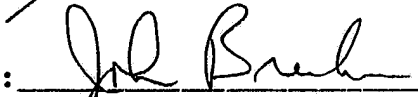

Thomas D. Hayes

By: 
Thomas D. Hayes, General Partner


J.C. Brager

By: 
J. C. Brager, General Partner

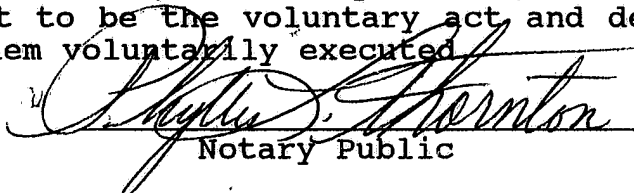

John Breslow

By: 
John Breslow, General Partner

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

On this 19th day of December, 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **THOMAS C. SMITH, THOMAS D. HAYES, J.C. BRAGER** and **JOHN BRESLOW**, to me personally known, who, being by me duly sworn, did say that they are the partners of said partnership; that said instrument was signed on behalf of said partnership; and that the said Thomas C. Smith, Thomas d. Hayes, J.C. Brager and John Breslow, as such partners, acknowledge the execution of said instrument to be the voluntary act and deed of said partnership by it and by them voluntarily executed.

Phyllis L. Thornton
GENERAL NOTARIAL
SEAL
STATE OF NEBRASKA
COMMISSION EXPIRES
April 6, 1993

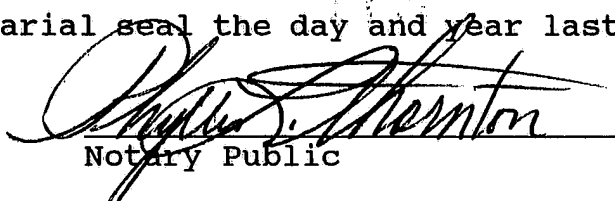

Notary Public

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

On this 19th day of December, 1991, before me, a Notary Public in and for said County and State, personally came **THOMAS C. SMITH, THOMAS D. HAYES, J.C. BRAGER** and **JOHN BRESLOW** to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the execution thereof to be a voluntary act and deed.

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

Phyllis L. Thornton
GENERAL NOTARIAL
SEAL
STATE OF NEBRASKA
COMMISSION EXPIRES
April 6, 1993


Notary Public

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BLOCK
CODE
CHECKED
ENTERED
EDITED

LINCOLN

LANCASTER COUNTY, NEB
Dan Nalte
REGISTER OF DEEDS
RE FILE
FEB 6 1 05 PM '92

\$ 27⁵⁰ -

INST. NO: 92 4714

LANCASTER COUNTY, NEB
Dan Nalte
REGISTER OF DEEDS
DEC 20 10 59 AM '91

\$ 27⁵⁰ -

LINCOLN
JM

Rec # 803
J. Kirk Hanson
Commercial Real Estate
Norwest Bk NE
Omaha 68102

42477

Norwest

INST. NO. 91

9402
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