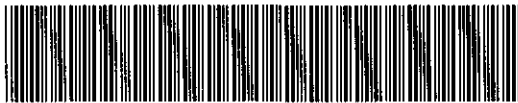




BK 1389 PG 275-281



MISC 2001 10221

REPUBLIC RECORDERS  
REGISTER OF DEEDS  
DODGE COUNTY, NEB.

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MISC 7  
FEE 36.00  
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**DECLARATION OF PERMANENT ACCESS EASEMENT**

This Declaration of Permanent Access Easement is made this 19th day of June, 2001 (hereinafter referred to as the "Effective Date"), by HD Investments, L.L.C., an Oklahoma limited liability company ("Declarant").

**RECITALS:**

WHEREAS, Declarant is the lawful owner of Lots 1 and 2, Commercial Federal Business Park Replat 2, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska;

WHEREAS, by virtue of the recording of this Declaration of Permanent Access Easement (the "Declaration"), the above legally described real property (hereinafter referred to individually as a "Lot 1" or "Lot 2" and collectively as the "Lots") shall be owned, held, transferred, sold, conveyed, used and occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any said Lot, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in any portion of any said Lot, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof;

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all future owners, fire, rescue and other emergency vehicles, occupants and mortgagees of Lot 2 or any part thereof and their respective officers, directors, members, partners, employees, tenants, agents,

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contractors, customers, invitees, licensees, vendors, subtenants or concessionaires ("Permittees"), ingress and egress, over and upon Lot 1 for the purpose of providing pedestrian and vehicular ingress and egress to and from the Lot 2 (but not parking) to the public street adjacent to Lot 1; and

NOW, THEREFORE, Declarant hereby grants and imposes the following easements, covenants and restrictions against the Lots which shall be for the benefit or burden, as the case may be, of all future owners, fire, rescue and other emergency vehicles, occupants and mortgagees of the Lots and their respective Permittees.

1. **Access Easement.** Declarant hereby grants to the owner of Lot 2 and their respective Permittees, their successors and assigns, a nonexclusive ingress and egress easement (but not parking) over and upon that part of Lot 1 described on Exhibit "A" attached hereto (the "Easement Area") solely for the purpose of providing vehicular and pedestrian ingress and egress to and from Lot 2 to the public street adjacent to Lot 1. No buildings or other improvements shall be permitted within the Easement Area, except drive and parking improvements which will not interfere with reasonably convenient traffic within the Easement Area.

2. **Nature of Easement.** The rights herein granted to any person or entity, or anyone claiming under them, shall terminate and expire at such time as such person or entity ceases to be an owner or mortgagee of Lot 2 or any portion thereof, as the case may be, and such rights shall thereafter be held by the new owner or mortgagee, or anyone claiming under them. The foreclosure of any mortgage covering all or a portion of Lot 1 shall in no way affect or diminish any easement granted herein, for all such easements shall remain in full force and effect for the benefit of the grantees described herein. The easements hereby created are not public easements, but are permanent, private easements for the use and benefit of the owners, future owners, fire, rescue and other emergency vehicles, occupants, mortgagees, and the Permittees. The parties hereto expressly disclaim the creation of any rights in or for the benefit of the public generally. It is understood and agreed that the easements shall continue for so long as Lot 2 remains in existence.

3. **Construction of Improvements.** In conjunction with initial construction of the improvements on Lot 1, the owner of Lot 1 shall install

and construct the paving within the Easement Area and the lighting and the marking of the parking lot adjacent to the Easement Area.

4. **Maintenance of Easement.** The owner of Lot 1 shall maintain, repair, operate, replace and keep the drive areas within the Easement Area in a first class condition and in a state of good repair (the "Easement Maintenance Obligation") including, without limitation, the following:

- a. Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability;
- b. Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- c. Inspecting, maintaining, repairing and replacing, as necessary, the drive surfaces, gutters, curbs and other drive improvements; and
- d. Inspecting, maintaining, repairing and replacing the lighting, if any, installed along the drive areas.

To reimburse the Owner of Lot 1 for a portion of the costs of the Easement Maintenance Obligation, on October 1, 2001, the Owner of Lot 2 shall pay the Owner of Lot 1 \$375.00. On January 1, 2001, the Owner of Lot 2 shall pay the Owner of Lot 1 \$1,530.00. Thereafter, on the first day of each calendar year for so long as this Easement remains in effect, the Owner of Lot 2 shall pay the Owner of Lot 1 an amount equal to 102% of the amount paid in the prior calendar year. In addition to the reimbursement to be paid by the Owner of Lot 2 to the Owner of Lot 1 towards the costs of the Easement Maintenance Obligation, the Owner of Lot 2 shall also promptly reimburse the Owner of Lot 1 the all of the actual costs of repairing any damage to the Easement Area occurring as a result of the construction of improvements on Lot 2. Any reimbursements due under this Section 4 or under Section 5 below, which are unpaid after thirty (30) days after the Owner responsible for paying the reimbursement has received written notice of the amount due and

the nature of the work done shall bear interest at the rate of sixteen percent (16%) per annum until paid and, upon filing of a notice of nonpayment with the Register of Deeds, shall by a lien on such Owner's Lot.

5. **Enforcement of Maintenance.** In the event any owner of Lot 1, or a portion thereof, shall fail to maintain or operate the drive area within the Easement Area in a first class condition, then, provided that the Owner of Lot 2 has paid all reimbursements for the Easement Maintenance Obligation then due, the Owner of Lot 2 shall have the right (but not the obligation) to do so and to charge the owner or owners of Lot 1 for the actual and reasonable costs and expenditures incurred in performing such maintenance, repair, replacement and operation, and said owner of Lot 2 is hereby granted an easement upon Lot 1 for the purpose of performing such maintenance.

6. **Restrictions.** No barricades, signs, fences, or other dividers will be constructed and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within the Easement Area except as is necessary for the construction, repair, maintenance, and replacement of the drive surface in the Easement Area.

7. **Effect of Covenants.** Each owner of any portion of the Lots, its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest of estate in said property, and shall inure to the benefit of such Lot owners on like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

8. **Waiver.** No covenant, restriction, condition or provision of this Declaration shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

9. **Savings Clause.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration herein contained, as the case may be, shall not render the remainder of the Declaration invalid, nor any other part therein contained.

10. **Amendment and Modifications.** This Declaration may be amended by the written consent and agreement of the record owners of the Lots or their successors and assigns. Any such modification or amendment shall be effective when duly recorded in the office of the Register of Deeds in the county in which said property is situated.

11. **Governing Law.** This Declaration shall be construed and governed in accordance with the laws of the State of Nebraska.

EXECUTED this 15<sup>th</sup> day of June, 2001.

DECLARANT:  
HD INVESTMENTS,

L.L.C.,

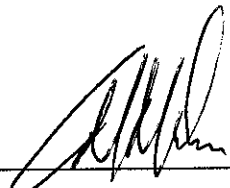
an Oklahoma limited liability  
company



By:

Manager

LENDER:  
OMAHA STATE BANK

  
\_\_\_\_\_

By:

Title:

SR V.P.

STATE OF OKLAHOMA )

) ss.

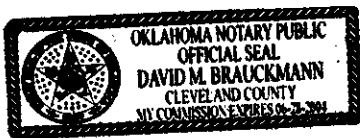
COUNTY OF CLEVELAND )

On this 15th day of JUNE, 2001, before me, the undersigned, a Notary Public duly commissioned and qualified for in said county, personally came Har W. Smith, Manager of HD Investments, L.L.C., an Oklahoma limited liability company, to me personally known to be the person whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed on behalf of HD Investments, L.L.C.

6/28/2004

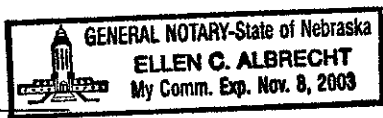
David M. Brauckmann

Notary Public



STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF Douglas        )

On this 19th day of June, 2001, before me, the undersigned, a Notary Public duly commissioned and qualified for in said county, personally came C.M. Maher, Senior Vice President of Omaha State Bank, to me personally known to be the person whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed on behalf of Omaha State Bank.



Ellen Albrecht

Notary Public

When recorded, return to:

Michael D. Matejka  
Fitzgerald, Schorr, Barmettler  
& Brennan, P.C., L.L.O.  
1100 Woodmen Tower  
Omaha, NE 68102-2002

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