



MISC 2006128742



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Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 11/9/2006 13:28:22.32

 2006128742

WHEN RECORDED RETURN TO
 JULIE DERMODY
 Cox Communications Omaha, Inc.
 11505 W. Dodge Rd.
 Omaha NE 68154

MEMORANDUM OF AGREEMENT
 (NEBRASKA)

PLEASE TAKE NOTICE that **Pacific Gardens Associates, LLC** ("Owner") and CoxCom, Inc. d/ Nebraska corporation ("Cox Communications") have entered into a Telecommunications Agreement ("Agreement") in accordance with its terms, entitles Cox Communications to provide cable television services throughout the premises here to and incorporated herein by this reference. Among other things, the Agreement provides Cox Communications with the right to use any property necessary or useful to provide such service and maintain its facilities on the property used in providing such services and assigns of the Owner in accordance with its terms. A copy of relevant provisions of the Agreement is attached hereto and incorporated herein by reference. A copy of relevant provisions of the Agreement is attached hereto and incorporated herein by reference. A copy of relevant provisions of the Agreement is attached hereto and incorporated herein by reference. A copy of relevant provisions of the Agreement is attached hereto and incorporated herein by reference.

Communications Omaha, Inc., a Nebraska corporation, on June 8, 2006, which, is described on Exhibit A attached hereto and incorporated herein by reference. The Agreement binds any successors and assigns of the Owner in accordance with its terms. A copy of relevant provisions of the Agreement is attached hereto and incorporated herein by reference.

Cox Communications requests that it receive notice of any pending trustee or foreclosure sale or other proceeding affecting the property, sent to the address above.

), bankruptcy or other proceeding

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

Cox Communications Omaha
 A Nebraska corporation



By: [Signature]
 Its: VP Regional Manager
 Print Name: Perry, Kirk

STATE OF NEBRASKA
 COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me this 16 day of Oct, 2006 by Perry, Kirk as VP/Regional Manager of Cox Communications Omaha, Inc. a Nebraska corporation, on behalf of said corporation.

[Signature]
 NOTARY PUBLIC
 My Commission Expires: 4-1-08

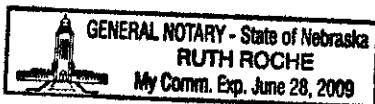
Pacific Gardens Associates LLC *96*

By: [Signature]
 Its: President
 Print Name: John Hass

STATE OF Nebraska

The foregoing instrument was acknowledged before me this 9 day of Oct, 2006 by John Hass as President of Pacific Gardens Associates, LLC on behalf of said company.

[Signature]
 NOTARY PUBLIC
 My Commission Expires: 6/28/09



[Handwritten initials]

Pacific Gardens

WITNESSETH:

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

Parcels A, B, C, D, E, F and G Pacific Gardens, an Addition to the City of Omaha, as surveyed, platted and recorded on June 16, 1958 in Book 1039 at Page 336 in the Office of the Register of Deeds of Douglas County, Nebraska; together with the portion of Parcel H, Pacific Gardens; an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, which portion of Parcel H is more particularly described as follows:

Beginning at the intersection of the north line of Marbee Drive and the north line of Pierce Street; thence northwesterly along the north line of Pierce Street for a distance of 53.9 feet; thence North 95.7 feet to a point 221.2 feet south of Pacific Street and 181.45 feet, more or less, west of 76th Avenue to a set iron pipe; thence easterly, 122.45 feet to a point 210.6 feet south of Pacific Street and 59.0 feet west of 76th Avenue; thence southeasterly 84.65 feet to a point on the south line of said Parcel H, Pacific Gardens; thence southwesterly along the south line of said Parcel H along a 177.9 foot radius curve to the left, whose chord distance is 110.4 feet, to the point of beginning,

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 thereof; (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 SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) 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.
- 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, subject to the First Deed of Trust as hereinafter described.
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.