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 Register of Deeds, Douglas County, NE
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LOAN NUMBER: 1277710

**COMMERCIAL CONSTRUCTION DEED OF TRUST
 FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED BY THIS REAL ESTATE DEED
 OF TRUST**

This COMMERCIAL CONSTRUCTION REAL ESTATE DEED OF TRUST ("Security Instrument") is made on **March 15, 2007** by **Hodges Enterprises #4, LLC**, a Nebraska **Limited Liability Company**, whose address is **5059 South 157th Street, Omaha, Nebraska 68135**; the grantor(s) ("Grantor"). The trustee is **Union Bank and Trust Company** whose address is **3646 So 48th St, PO Box 82535, Lincoln, Nebraska 68501-2535**, ("Trustee"). The beneficiary is **Union Bank & Trust Company** whose address is **3643 South 48th Street, PO Box 82535, Lincoln, Nebraska 68501-2535** ("Lender"), which is organized and existing under the laws of the state of Nebraska. Grantor in consideration of loans extended by Lender up to a maximum principal amount of **Nine Hundred Thousand and 00/100 Dollars (\$900,000.00)** ("Maximum Principal Indebtedness"), and for other valuable consideration, the receipt of which is acknowledged, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the following described property located in the **County of Douglas**, State of Nebraska:

Address: **10702 Q Street, Omaha, Nebraska 68127**
 Legal Description: *****See Exhibit A****

Together with all easements, appurtenances abutting streets and alleys, improvements, buildings, fixtures, tenements, hereditaments, equipment, rents, income, profits and royalties, personal goods of whatever description and all other rights and privileges including all minerals, oil, gas, water, water wells, ditches, reservoirs, reservoir sites and dams located thereon and all riparian and water rights and water stock associated therewith, payment awards, amounts received from eminent domain, amounts received from any and all insurance payments, and timber which may now or later be located, situated, or affixed on and used in connection therewith (hereinafter called the "Property").

RELATED DOCUMENTS. The words "Related Documents" mean all promissory notes, security agreements, prior mortgages, prior deeds of trust, business loan agreements, construction loan agreements, resolutions, guaranties, environmental agreements, subordination agreements, assignments of leases and rents and any other documents or agreements executed in connection with this Security Instrument whether now or hereafter existing. The Related Documents are hereby made a part of this Security Instrument by reference thereto, with the same force and effect as if fully set forth herein.

INDEBTEDNESS. This Security Instrument secures the principal amount shown above as may be evidenced by a promissory note or notes of even, prior or subsequent date hereto, including future advances and every other indebtedness of any and every kind now or hereafter owing from Grantor and **DKPM Investments Corporation** and **Hodges Enterprises #1, LLC** and **Hodges Enterprises #2, LLC** to Lender, howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided in or arising out of such indebtedness, as well as the agreements and covenants of this Security Instrument and all Related Documents (hereinafter all referred to as the "Indebtedness"). **INCREASED MAXIMUM PRINCIPAL INDEBTEDNESS:** Grantor hereby acknowledges that the principal amount shown above will automatically be increased by any future advances or other Indebtedness of the Grantor to the Lender. Notwithstanding the foregoing, the parties agree that the total amount which is secured by this Security Instrument shall not exceed **\$1,800,000.00**. *dlh* (Initials)

FUTURE ADVANCES. To the extent permitted by law, this Security Instrument will secure future advances as if such advances were made on the date of this Security Instrument regardless of the fact that from time to time there may be no balance due under the note and regardless of whether the Lender is obligated to make such future advances.

CROSS COLLATERALIZATION. It is the expressed intent of Grantor to cross collateralize all of its Indebtedness and obligations to the Lender, howsoever arising and whensoever incurred.

CONSTRUCTION LOAN AGREEMENT. This Security Instrument is made in conjunction with a Construction Loan Agreement dated the same date as this Security Instrument and is subject to all of the provisions of the Construction Loan Agreement as if those provisions were fully set forth in this security Instrument and made a part of it.

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WARRANTIES. Grantor, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

Performance of Obligations. Grantor promises to perform all terms, conditions, and covenants of this Security Instrument and Related Documents in accordance with the terms contained therein.

Defense and Title to Property. At the time of execution and delivery of this instrument, Grantor is lawfully seized of the estate hereby conveyed and has the exclusive right to mortgage, grant, convey and assign the Property. Grantor covenants that the Property is unencumbered and free of all liens, except for encumbrances of record acceptable to Lender. Further, Grantor covenants that Grantor will warrant and defend generally the title to the Property against any and all claims and demands whatsoever, subject to the easements, restrictions, or other encumbrances of record acceptable to Lender, as may be listed in the schedule of exceptions to coverage in any abstract of title or title insurance policy insuring Lender's interest in the Property.

Condition of Property. The Grantor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition and will from time to time, make all needful and proper repairs so that the value of the Property shall not in any way be impaired.

Removal of any Part of the Property. Grantor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business.

Alterations to the Property. Grantor promises to abstain from the commission of any waste on the Property. Further, Grantor shall make no material alterations, additions or improvements of any type whatever to the Property, regardless of whether such alterations, additions or improvements would increase the value of the Property, nor permit anyone to do so except for tenant improvements and completion of items pursuant to approved plans and specifications, without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Grantor will comply with all laws and regulations of all public authorities having jurisdiction over the premises relating to the use, occupancy and maintenance thereof and shall upon request promptly submit to Lender evidence of such compliance.

Due on Sale - Lender's Consent. Grantor shall not sell, further encumber or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of Lender. If any encumbrance, lien, transfer or sale or agreement for these is created, Lender may declare immediately due and payable, the entire balance of the Indebtedness.

Insurance. Grantor promises to keep the Property insured against such risks and in such form as may within the sole discretion of Lender be acceptable, causing Lender to be named as loss payee or if requested by Lender, as mortgagee. The insurance company shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. All insurance policies must provide that Lender will get a minimum of 10 days notice prior to cancellation. At Lender's discretion, Grantor may be required to produce receipts of paid premiums and renewal policies. If Grantor fails to obtain the required coverage, Lender may do so at Grantor's expense. Grantor hereby directs each and every insurer of the Property to make payment of loss to Lender with the proceeds to be applied, only at Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by Lender to Grantor.

Payment of Taxes and Other Applicable Charges. Grantor promises to pay and to discharge liens, encumbrances, taxes, assessments, lease payments and any other charges relating to the Property when levied or assessed against Grantor or the Property.

Environmental Laws and Hazardous or Toxic Materials. Grantor and every tenant have been, are presently and shall continue to be in strict compliance with any applicable local, state and federal environmental laws and regulations. Further, neither Grantor nor any tenant shall manufacture, store, handle, discharge or dispose of hazardous or toxic materials as may be defined by any state or federal law on the Property, except to the extent the existence of such materials has been presently disclosed in writing to Lender. Grantor will immediately notify Lender in writing of any assertion or claim made by any party as to the possible violation of applicable state and federal environmental laws including the location of any hazardous or toxic materials on or about the Property. Grantor indemnifies and holds Lender harmless from any liability or expense of whatsoever nature incurred directly or indirectly as a result of Grantor's violation of applicable local, state and federal environmental laws and regulations or Grantor's involvement with hazardous or toxic materials.

Financial Information. Grantor agrees to supply Lender such financial and other information concerning its affairs and the status of any of its assets as Lender, from time to time, may reasonably request. Grantor further agrees to permit Lender to verify accounts as well as to inspect, copy and to examine the books, records and files of Grantor.

Lender's Right to Enter. The Lender or Lender's agents shall have the right and access to inspect the Property at all reasonable times in order to attend to Lender's interests and ensure compliance with the terms of this Security Instrument. If the Property, or any part thereof, shall require inspection, repair or maintenance which the Grantor has failed to provide, the Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the Indebtedness and paid on the Lender's demand by the Grantor.

ASSIGNMENT OF LEASES AND RENTS. As additional security for the payment of the Indebtedness and the performance of the covenants contained herein, Grantor hereby assigns and transfers over to Lender all rents,

income and profits ("Rents") under any present or future leases, subleases or licenses of the Property, including any guaranties, extensions, amendments or renewals thereof, from the use of the Property. So long as Grantor is not in default, Grantor may receive, collect and enjoy all Rents accruing from the Property, but not more than one month in advance of the due date. Lender may also require Grantor, tenant and any other user of the Property to make payments of Rents directly to Lender. However, by receiving any such payments, Lender is not, and shall not be considered, an agent for any party or entity. Any amounts collected may, at the Lender's sole discretion, be applied to protect the Lender's interest in the Property, including but not limited to the payment of taxes and insurance premiums and to the Indebtedness. At Lender's sole discretion, all leases, subleases and licenses must first be approved by Lender.

CONDEMNATION. Grantor shall give Lender notice of any action taken or threatened to be taken by private or public entities to appropriate the Property or any part thereof, through condemnation, eminent domain or any other action. Further, Lender shall be permitted to participate or intervene in any of the above described proceedings in any manner it shall at its sole discretion determine. Lender is hereby given full power, right and authority to receive and receipt for any and all damages awarded as a result of the full or partial taking or appropriation and in its sole discretion, to apply said awards to the Indebtedness, whether or not then due or otherwise in accordance with applicable law. Unless Lender otherwise agrees in writing, any application of proceeds to the Indebtedness shall not extend or postpone the due date of the payments due under the Indebtedness or change the amount of such payments.

GRANTOR'S ASSURANCES. At any time, upon a request of Lender, Grantor will execute and deliver to the Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other document as Lender may require, in Lender's sole discretion, to effectuate, complete and to perfect as well as to continue to preserve the Indebtedness, or the lien or security interest created by this Security Instrument.

ATTORNEY-IN-FACT. Grantor appoints Lender as attorney-in-fact on behalf of Grantor. If Grantor fails to fulfill any of Grantor's obligations under this Security Instrument or any Related Documents, including those obligations mentioned in the preceding paragraph, Lender as attorney-in-fact may fulfill the obligations without notice to Grantor. This power of attorney shall not be affected by the disability of the Grantor.

EVENTS OF DEFAULT. The following events shall constitute default under this Security Instrument (each an "Event of Default"):

- (a) Failure to make required payments when due under Indebtedness;
- (b) Failure to perform or keep any of the covenants of this Security Instrument or a default under any of the Related Documents;
- (c) The making of any oral or written statement or assertion to the Lender that is false or misleading in any material respect by Grantor or any person obligated on the Indebtedness;
- (d) The death, dissolution, insolvency, bankruptcy or receivership proceeding of Grantor or of any person or entity obligated on the Indebtedness;
- (e) Any assignment by the Grantor for the benefit of the Grantor's creditors;
- (f) A material adverse change occurs in the financial condition, ownership or management of Grantor or any person obligated on the Indebtedness; or
- (g) The Lender deems itself insecure for any reason whatsoever.

REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, Lender may, without demand or notice, pay any or all taxes, assessments, premiums, and liens required to be paid by Grantor, effect any insurance provided for herein, make such repairs, cause the abstracts of title or title insurance policy and tax histories of the Property to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and procure title reports covering the Property, including surveys. The amounts paid for any such purposes will be added to the Indebtedness and will bear interest at the rate of interest otherwise accruing on the Indebtedness until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of the Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness will remain in Lender's possession until the Indebtedness is paid in full.

IN THE EVENT OF THE SALE OF THIS PROPERTY UNDER THE PROCEDURE FOR FORECLOSURE OF A SECURITY INSTRUMENT BY ADVERTISEMENT, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT THE LENDER EXERCISES ITS RIGHTS UNDER THE ASSIGNMENT OF LEASES AND RENTS, THE GRANTOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, OR TO ANY JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS.

Upon the occurrence of an Event of Default, Lender may, without notice unless required by law, and at its option, declare the entire Indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof and, if permitted by state law, is authorized and empowered to sell or to cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers at such sale any deeds of conveyance good and sufficient at law, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys' fees, rendering any surplus to the party or parties entitled to it. The recitals in the trustee's deed shall be prima facie evidence of the truth of the statements made in it. If Lender chooses to invoke the power of sale, Lender or Trustee will provide notice of sale pursuant to applicable law. Any such sale or a sale made pursuant to a judgment or a decree of the foreclosure hereof may, at the option of Lender, be made en masse. The commencement of proceedings to foreclose this Mortgage in any manner authorized by law shall be deemed as exercise of the above option.

Upon the occurrence of an Event of Default, Lender shall immediately be entitled to make application for and obtain the appointment of a receiver for the Property and of the earnings, income, issue and profits of it, with the powers as the court making the appointments confers. Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor.

NO WAIVER. No delay or failure of Lender to exercise any right, remedy, power or privilege hereunder shall affect that right, remedy, power or privilege nor shall any single or partial exercise thereof preclude the exercise of any right, remedy, power or privilege. No Lender delay or failure to demand strict adherence to the terms of this Security Instrument shall be deemed to constitute a course of conduct inconsistent with Lender's right at any time, before or after an event of default, to demand strict adherence to the terms of this Security Instrument and the Related Documents.

SUBSTITUTE TRUSTEE. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

JOINT AND SEVERAL LIABILITY. If this Security Instrument should be signed by more than one person, all persons executing this Security Instrument agree that they shall be jointly and severally bound, where permitted by law.

SURVIVAL. The Lender's rights in this Security Instrument will continue in its successors and assigns. This Security Instrument is binding on all heirs, executors, administrators, assigns and successors of the Grantor.

NOTICES AND WAIVER OF NOTICE. Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Security Instrument unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Grantor waives notice of Lender's acceptance of this Security Instrument, defenses based on suretyship, any defense arising from any election by Lender under the United States Bankruptcy Code, Uniform Commercial Code, as enacted in the state where the Lender is located or other applicable law or in equity, demand, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other notice.

TO THE EXTENT PERMITTED BY LAW, GRANTOR WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS ASSIGNMENT.

WAIVER OF APPRAISEMENT RIGHTS. Grantor waives all appraisal rights relating to the Property to the extent permitted by law.

LENDER'S EXPENSES. Grantor agrees to pay all expenses incurred by Lender in connection with enforcement of its rights under the Indebtedness, this Security Instrument or in the event Lender is made party to any litigation because of the existence of the Indebtedness or this Security Instrument, as well as court costs, collection charges and reasonable attorneys' fees and disbursements.

ASSIGNABILITY. Lender may assign or otherwise transfer this Security Instrument or any of Lender's rights under this Security Instrument without notice to Grantor. Grantor may not assign this Security Instrument or any part of the Security Instrument without the express written consent of Lender.

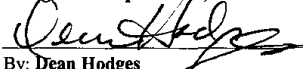
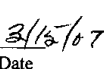
GOVERNING LAW AND JURISDICTION. This Security Instrument will be governed by the laws of the State of Nebraska.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Security Instrument is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of the Security Instrument without invalidating the remainder of either the affected provision or this Security Instrument.

ENTIRE AGREEMENT OF THE PARTIES. This agreement, including all agreements referred to or incorporated into this agreement, constitutes the entire agreement between the parties relating to the subject matter of this agreement. This agreement supersedes all prior oral or written agreements, commitments and understandings between the parties relating to the subject matter of this agreement and cannot be changed or terminated orally, and shall be deemed effective as of the date noted above.

By signing this Security Instrument, each Grantor acknowledges that all provisions have been read and understood. Signed and sealed by Grantor (s):

Hodges Enterprises #4, LLC

 
By: Dean Hodges Date
Its: Managing Member

BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

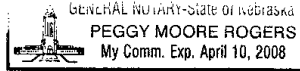
This instrument was acknowledged on the 15th day of March, 2007, by:

Dean Hodges, Managing Member on behalf of **Hodges Enterprises #4, LLC**, a Nebraska Limited Liability Company, who personally appeared before me.

In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: April 10, 2008 Peggy Moore-Rogers

(Official Seal)



THIS INSTRUMENT PREPARED BY:
Union Bank & Trust Company
3643 South 48th Street, PO Box 82535
Lincoln, NE 68506

Return

AFTER RECORDING RETURN TO:
Union Bank & Trust Company
3643 South 48th Street, PO Box 82535
Lincoln, NE 68506

EXHIBIT A

Part of the South 200 feet of the East 200 feet of Lot 1 in Mockingbird Hills West, a Subdivision in Douglas County, Nebraska, more particularly described as follows: Beginning at the Southeast corner of Lot 1; thence N89°40'W (assumed bearing) along the North right-of-way line of "Q" Street a distance of 200.00 feet; thence N00°00'E a distance of 200.00 feet; thence S89°40'E a distance of 200.00 feet to a point on the West right of way line of 107th Street; thence S00°00'W along the West right of way line of 107th Street a distance of 200.00 feet to the point of beginning, EXCEPTING THEREFROM that portion conveyed to the City of Omaha, by Warranty Deed filed January 4, 1994, in Book 1968 at Page 538.