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*Glenn J. Dowling*  
REGISTER OF DEEDS

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## COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT ("Agreement") is made as of the 1st day of July, 2002, by Papillion Professional Park, L.L.C., a Nebraska limited liability company ("Papio") and Edward F. Person and Cari L. Person ("Persons").

### 1. Recitals.

1.1 Persons is the Owner of Parcels 1, 2, 3, & 4, all as is more particularly described in Schedule I, attached hereto and incorporated herein by this reference. Parcels 1 through 4 are hereinafter collectively referred to as the "Center" and sometimes "Parcels", and are sometimes referred to singly as a "Parcel". Persons hereby consents to the recordation of this Agreement against the Parcels.

1.2 By virtue of that certain document entitled "Declaration of Restrictions and Grant of Easements" which encumbers the Development and is recorded concurrently herewith ("Declaration"), the Owners have executed reciprocal easements each in favor of the other covering those portions of the Center defined in the Declaration as "Common Area."

1.3 The Owners desire to provide for the common operation, cleaning, landscaping, maintenance, repair, replacement and insurance of certain elements of the Common Area within the Center as hereinafter provided, with the Owners retaining the sole responsibility for their own buildings.

1.4 All of the terms in this Agreement shall have the meanings set forth in the Declaration, the provisions of which are incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the Declaration, the Declaration shall control.

### 2. Maintenance Standards.

2.1 Commencing on the date a Parcel Owner first opens its building for business, the Maintenance Director shall, except as hereinafter provided, maintain the Common Area at all times in good and clean condition and repair, in a quality and condition comparable to that of other similar office park developments

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing

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material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary;

(b) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition (snow shall not be pushed or piled in areas or in a manner so as to impede access to building docks, doors, entrances, exits or trash facilities);

(c) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

(d) Maintaining, repairing and replacing, when necessary, the above ground portion of parking lot artificial lighting facilities as shall be reasonably required;

(e) Maintaining all landscaping areas (including, without limitation, those on the perimeter of the Center);

(f) Maintaining, repairing and replacing when necessary storm sewer pipes, inlets and outlets;

(g) Performance itself or contracting with a third party or parties to perform any of the services described herein.

2.2 In addition to the foregoing, the Maintenance Director shall provide and maintain comprehensive general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Maintenance Director against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the state in which the Center is located and all persons who now or hereafter own or hold portions of the Development or building space within the Development or any leasehold estate or other interest therein as their respective interests may appear (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence. The Maintenance Director shall furnish all Parcel Owners with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be cancelled, materially changed or nonrenewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

2.3 Anything in this Article 2 to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities (as defined in the Declaration) or driveup or drive through customer service facilities, which facilities shall be maintained by the Owners thereof in good and clean condition and repair and in a quality and condition to the quality and condition of the maintenance of the balance of

the Common Area. In addition, the Owners of the Parcel or Parcels on which said facilities are located shall at all times (i) provide and maintain or cause to be provided and maintained comprehensive general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring all persons who now or hereafter own or hold portions of said facilities or any leasehold estate or other interest therein as their respective interests may appear against claims for personal injury, bodily injury or death or property damage or destruction occurring in, on or about said facilities, and (ii) indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about said facilities and arising out of the performance or nonperformance of any of the obligations of the Owners of the Parcel or Parcels on which said facilities are located set forth in this Section 2.3, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees. Said insurance shall be written with an insurer licensed to do business in the state in which the Center is located and in the amounts set forth in Section 2.2 above. The Owners of any such Parcel or Parcels shall furnish the Maintenance Director and any other Owner with certificates evidencing such insurance upon request. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Agreement.

**2.4 Building Maintenance.** In the event a Parcel Owner is not maintaining the exterior of the building in a professional or safe condition, the Maintenance Director shall have the right, but not the obligation to make repairs or maintenance to the exterior of a structure with sixty (60) days written notice to the Parcel Owner. The Parcel Owner shall have said sixty (60) day period to substantially complete such repairs or maintenance on its own behalf. If the repairs or maintenance is completed by the Maintenance Director, he shall be entitled to a Service Charge as defined in 6.4 below. The Parcel Owner shall be obligated to pay all such costs and the Maintenance Director shall have the right to lien the Parcel Owner as per section 10 below.

**3. Lighting.** It is agreed that the artificial lighting for the Common Area and signage shall remain on from dusk until 1:00 a.m. Each Parcel Owner shall pay the costs for electricity (which may be separately metered), for lighting of their respective Parcel. In the event that more lighting is required by the vote of the Parcel Owners than originally installed, the cost of such installation and the operating costs thereafter shall be paid equally by the Parcel Owners prior to installation.

**4. Taxes.** Each Owner shall pay direct to the tax collector when due the real property taxes and other special taxes assessments assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

**5. Maintenance Director.**

**5.1** The Owners hereby appoint Papio as Maintenance Director from and after the date any Parcel Owner first opens its building for business.

5.2 The Maintenance Director shall have the right, upon giving ninety (90) days prior written notice to the Owners of the Center, to resign as Maintenance Director. The Maintenance Director may be removed by the Owners of a majority of the Parcels, provided, however, the Maintenance Director appointed pursuant to Section 5.1 may not be removed without its consent, unless it is in default under Section 9.3, below, and such default is material.

5.3 In the event of the removal or resignation of the Maintenance Director, the Owners of a majority of the Parcels shall appoint another person to be the Maintenance Director.

**6. Reimbursement of Maintenance Director.**

6.1 The Maintenance Director shall contract for and pay for all of the items enumerated as maintenance and insurance expenses in Article 2 herein.

6.2 At least thirty (30) days prior to the initial commencement of the cleaning and sweeping of the Common Area and any other Common Area maintenance work done on a regular basis, the Maintenance Director shall submit said Common Area maintenance work for bid to a least three (3) bidders approved in writing by the Consenting Owners (as defined in the Declaration), which approval shall not be unreasonably withheld or delayed. The names of the bidding contractors or companies and the amounts of their respective bids shall be furnished to the Consenting Owners by the Maintenance Director within ten (10) days after receipt thereof. The Maintenance Director shall award the contract to the low bidder unless the prior written consent of the Consenting Owners to award the contract to a higher bidder is first obtained by the Maintenance Director.

6.3 The Maintenance Director shall, so often as is reasonably necessary, have the Common Area maintenance work, or any portion thereof, rebid in the manner set forth in Section 6.2. The foregoing notwithstanding, the Maintenance Director shall not be required to rebid any item before the expiration of the term of the applicable contract. In no event shall the Maintenance Director enter into any contract for all or any portion of the Common Area maintenance work for a term in excess of one (1) year without the prior written approval of the Consenting Owners.

6.4 The Owners of all the Parcels shall cause the Maintenance Director to be reimbursed for all of its out-of-pocket expenses in performing such services plus a maximum service charge ("Service Charge") of ten percent (10%) of said expenses to cover management and administration costs. The Common Area expenses shall not include any costs incurred by the Maintenance Director for the services of a manager or management company or for office overhead or compensation of its employees except to the extent included in the ten percent (10%) service charge.

6.5 The Maintenance Director may appoint a professional management company to perform the duties of Maintenance Director with the majority approval of the Owners of the Parcels. In the event of such appointment the Maintenance Director shall not be entitled to a Service Charge, but shall be reimbursed for any out-of-pocket expenses incurred in performing any reasonable Maintenance Director duties.

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6.6 The Maintenance Director agrees to perform its duties under this Agreement with an end of keeping such expenses at a reasonable minimum.

**7. Billing for Expenses.**

7.1 The Owner of each Parcel shall pay for its pro rata share of all expenses incurred by the Maintenance Director in maintaining and insuring the Common Area as provided above (including the Service Charge). Each Parcel Owner's proportionate share of expenses for each calendar year (or portion thereof) shall be reasonably estimated in advance by Maintenance Director, and such estimate shall be paid in equal monthly installments on or before the first day of each calendar month. Each Owner shall pay to Maintenance Director, on demand the amount, if any, equal to the amount by which the Owner's proportionate share of the actual expenses in any particular month exceeds the Owner's proportionate share of the estimated expenses. Any excess amounts paid during a calendar year shall be credited towards the amounts payable in the following year. The proportionate share of the total Common Area expenses to be borne by each Owner for any year shall be that percentage set forth below:

Parcel 1	25%
Parcel 2	25%
Parcel 3	25%
Parcel 4	25%

7.2 The Owner of a Parcel may, upon not less than ten (10) days prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Common Area maintenance and insurance expenses incurred during the preceding calendar year at the Maintenance Director's offices or at such other location reasonably designated by the Maintenance Director at any time during reasonably business hours within one (1) year after the end of said calendar year. The Maintenance Director's expenses for any calendar year shall be deemed correct if the Owner of a Parcel does not give the Maintenance Director written notice of any such overpayment or underpayment within the one (1) year period provided.

**8. Effect of Sale by Owner.**

8.1 In the event an Owner sells all or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

**9. Default.**

9.1 In the event any Owner fails or refuses to pay when due its share of any bill for the Common Area maintenance and insurance expenses described above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses of the defaulting Owner ("Curing Party") for reimbursement plus interest from and after the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of the highest rate allowed by law or sixteen percent (16%) (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses (including the Service Charge) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9.2 In the event any Owner fails to perform any other provision of this Agreement, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such failure.

9.3 In the event the Maintenance Director fails to perform any of the provisions of this Agreement, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from any Owner specifying the particulars of such failure, such failure shall constitute a default and any Owner may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law and/or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure.

9.4 In addition to the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal) as determined by the court in the same or a separate proceeding.

9.5 The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any

subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

9.6 In addition to the remedies set forth in this Agreement, each person entitled to enforce this Agreement shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any person shall exclude any other remedy herein or by law provided, but each shall be cumulative.

#### **10. Lien for Expenses or Taxes.**

10.1 The lien provided for in Article 9 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Center is located, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;
- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
- (d) The name and address of the Curing Owner or Curing Party.

10.2 The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction. Any such lien shall bear interest (compounded monthly) from the date of filing until fully paid at the maximum interest rate allowed by law, but not to exceed fifteen percent (15%)

#### **11. Responsibility if No Maintenance Director.**

11.1 In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Articles 9 and 10 shall apply.

11.2 In the event there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings

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and causes of action, for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Parcel and arising out of the performance or nonperformance of any of the obligations of the Owner of said Parcel set forth in Section 11.1, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors, or employees.

**12. General Provisions.**

12.1 This Agreement shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors, and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

12.2 The term of this Agreement shall be for twenty-five (25) years from the date hereof, whereupon it shall automatically renew for successive twenty-five (25) year periods unless terminated by the Consenting Owners; provided, however, that this Agreement shall terminate automatically upon the expiration or earlier termination of the Declaration.

12.3 Anything in this Agreement to the contrary notwithstanding, no breach of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon, and be effective against, any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

12.4 Each term, covenant, condition and agreement contained herein respecting any Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

12.5 This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of all Parcels in the Center at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the Owners, duly recorded in the office of the recorder of the county in which the Center is located. No modification or termination of this Agreement shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

12.6 All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls in the county in which the Center is located. All notices to Parcel Owners shall be sent to the person and address set forth below:

Papillion Professional Park. L.L.C.  
c/o Michael T. Moylan  
INVESTORS REALTY, INC.  
11301 Davenport Street, Omaha, NE 68154



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The person and address to which notices are to be given may be changed at any time by any Parcel Owner upon written notice to the other parties. A Parcel Owner may file of record a notice of such change in notice address. All notices given pursuant to this Agreement shall be deemed given upon receipt.

For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to this section as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

**13. Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**14. Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**15. Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

**16. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, written or oral, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

**17. Construction.** In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

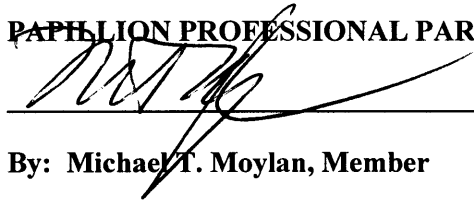
**18. Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

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19. **Recordation.** This Agreement shall be recorded in the office of the recorder of the county in which the Center is located.

EXECUTED as of the day and year first above written.

**PAPILLION PROFESSIONAL PARK, L.L.C.**

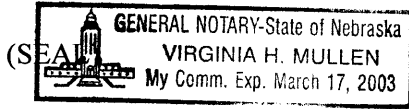
  
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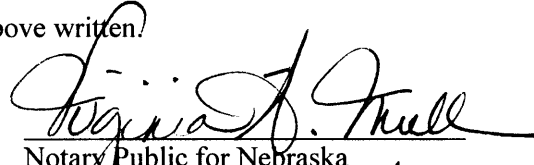
By: **Michael T. Moylan, Member**

STATE OF NEBRASKA            )  
  )ss.  
COUNTY OF Douglas        )

Acknowledged before me, the undersigned Notary Public, in and for said County and State, on this 15<sup>th</sup> day of July 2002, by Michael T. Moylan, as Member of Papillion Professional Park, L.L.C., a Nebraska limited liability company, for and on behalf of the company and the partnership


WITNESS by hand and notarial seal the day above written.




  
Notary Public for Nebraska  
My Commission expires: 3/17/2002

**Edward F. Person and Cari L. Person ("Persons")**

16573 Ontario Circle  
Omaha, NE 68130 (402) 333-1783

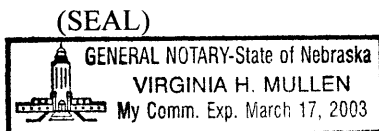
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Edward F. Person

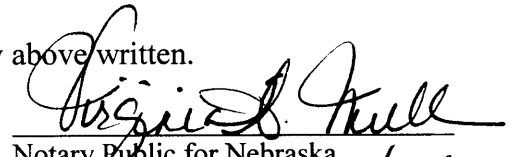
By:   
Cari L. Person

STATE OF NEBRASKA            )  
  )ss.  
COUNTY OF Douglas        )

Acknowledged before me, the undersigned Notary Public, in and for said County and State, on this 15<sup>th</sup> day of July 2002, by Edward F. Person and Cari L. Person.

WITNESS by hand and notarial seal the day above written.



  
Notary Public for Nebraska  
My Commission expires: 3/17/2002

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**SCHEDULE I**  
**Description of Center**

The Center is made up of Parcels 1, 2, 3 and 4 which are legally described as follows:

**Parcel 1:** Lot 1, Papillion Professional Park, as surveyed, platted and Recorded in Sarpy County, Nebraska.

**Parcel 2 -** Lot 2, Papillion Professional Park, as surveyed, platted and Recorded in Sarpy County, Nebraska.

**Parcel 3 -** Lot 3, Papillion Professional Park, as surveyed, platted and Recorded in Sarpy County, Nebraska.

**Parcel 4 -** Lot 4, Papillion Professional Park, as surveyed, platted and Recorded in Sarpy County, Nebraska.