

COUNTER <u>DKH</u>
VERIFY <u>DKH</u>
FEES \$ <u>58.00</u>
CHG <u>SFILE</u>
SUBMITTED <u>TITLECORE - OMAHA ESCROW</u>

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2013-16415**

2013 May 23 01:44:35 PM

*Sheryl J. Riffel*

REGISTER OF DEEDS



After Recording, Return to: Andrew M. Collins, Erickson | Sederstrom, P.C., 10330 Regency Parkway Drive, Suite 100, Omaha, NE 68114

### DEED OF TRUST

THIS DEED OF TRUST, made this 14<sup>th</sup> day of May, 2013, by and between ONEDMS, LLC, an Arizona limited liability company with its principal place of business at 6131 W Van Buren, Phoenix, AZ 85043, as "Trustor;" Andrew M. Collins, Esq., a member of the Nebraska State Bar Association and attorney at law, Nebraska Bar No. 24018, as "Trustee" whose mailing address is 10330 Regency Parkway Drive, Suite 100, Omaha, NE 68114; and Norman D. Riffel, as Trustee under the Norman D. Riffel Revocable Trust and Joyce J. Riffel, as Trustee under the Joyce J. Riffel Revocable Trust, as Beneficiary, whose mailing address is 12604 Cottonwood Lane, Springfield, NE 68059.

WITNESSETH: That Trustor, in consideration of One Dollar (\$1.00) and other valuable consideration receipt whereof is hereby acknowledged, grants, conveys, sells and warrants to Trustee, in trust, with power of sale, the property legally described as set forth in Exhibit "A," attached hereto and incorporated herein by this reference, situated in Sarpy County, Nebraska:

The intention being to convey hereby an absolute title in fee simple, including all the rights of homestead and dower, together with all buildings, fixtures, improvements and appurtenances thereunto belonging; and all of the foregoing, together with said property are herein referred to as the "Property" or "Trust Property".

FOR THE PURPOSE OF SECURING performance of each agreement and covenant of Trustor herein and in that certain Agreement dated May 6, 2013 by and between Trustor, Daniel's Moving and Storage, Inc., an Arizona Corporation, Beneficiary, Norman D. Riffel and Joyce J. Riffel, husband and wife, Metro Moving Services, Inc., a Nebraska corporation, and Tri Cities Moving Services, Inc., a Nebraska corporation (the "Agreement"), and that certain Promissory Note of even date herewith, in the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), made by Trustor in favor of Beneficiary (the "Note").

Trustor and Beneficiary covenant and agree as follows:

1. Warranty of Title. Trustor is lawfully seized of and possessed of a good and indefeasible title and estate to such property in fee simple, subject to easements, covenants and restrictions of record (herein "Permitted Exceptions"); it has good right and lawful authority to sell

and convey the Property; the Property is free and clear of all liens and encumbrances other than the Permitted Exceptions; and Trustor will warrant and defend the title to the Property unto the Trustee and its successors and assigns forever, against the claims of all persons. Trustor, at its expense, will maintain and preserve the lien of this Trust Deed as a first lien upon such property senior to all others.

2. Payment of Principal and Interest. Trustor shall punctually pay the principal of, and interest on, the Note, including any advances thereto as provided herein on the dates and at the place and in the manner provided therein and will punctually perform all agreements, conditions and provisions of the Agreement, the Note, and any other security instrument given in connection with the transactions contemplated under the Agreement.

3. Preservation and Maintenance of Property. Trustor will not commit any waste upon the Property and will, at all times, maintain the same in good order and condition and will make, from time to time, all repairs, renewals, replacements, additions and improvements which are reasonably required to prevent waste, impairment, or deterioration of the Property. No building or improvement now or hereafter erected upon the Property shall be altered, removed or demolished without the prior written consent of Beneficiary.

4. Damage to Property. In case of any damage to, or destruction of, any buildings, improvements or personal property constituting part of the Trust Property, if any, whether such loss is covered by insurance or otherwise, Trustor, at its sole cost and expense, will promptly restore, repair, replace and rebuild the same as nearly as practicable to its condition immediately prior to such damage or destruction or with such changes and alterations as Trustor may deem appropriate, provided such changes and alterations do not materially lessen the value and utility of such buildings, improvements and personalty from that existing immediately prior to such damage or destruction. Trustor shall be entitled to reimbursement from the Trustee to the extent of the net insurance proceeds received by Trustee, but only to the extent of the actual sum expended under this provision.

5. Taxes and Assessments. Trustor shall pay all taxes and special assessments levied or assessed against or due upon the Property before delinquency, and will upon request of Beneficiary deliver to Beneficiary copies of receipts showing payment of such taxes and special assessments. Upon demand by Beneficiary, Trustor shall deliver to Trustee such additional sums of money as are necessary to make up any deficiency in the amounts necessary to enable Trustee to pay any of the foregoing items.

6. Additional Liens. Trustor shall make all payments of interest and principal and payments of any other charges, fees, and expenses contracted to be paid to any existing lien holders or prior beneficiaries under any prior Trust Deed, Mortgage or other security agreement, before the date they are delinquent and to pay any other claim which jeopardizes the security granted herein.

7. Protection of Beneficiary's Security. Should Trustor fail to make any payment, fail to do any act as herein provided, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, but not limited to, eminent domain, insolvency, arrangements or proceedings involving a bankrupt or decedent, then Beneficiary or

Trustee may, but without obligation to do so, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereunder, make or do the same, and may pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either appears to affect said Property; in exercising any such powers the Beneficiary or Trustee may incur any liability and expend whatever amounts, including disbursements of reasonable attorney's fees, which in their absolute discretion, may be necessary. In the event that Trustor shall fail to procure insurance or to pay taxes, and special assessments or to make any payments under the Loan Agreement, the Beneficiary may procure such insurance and make such payments. All sums incurred or expended by Beneficiary or Trustee in accordance with the provisions of this Trust Deed are secured hereby and, without demand, shall be immediately due and payable by Trustor and shall bear interest at the maximum allowable legal rate.

8. Assignment of Rents. Beneficiary shall have the right, power and authority during the continuance of this Trust Deed to collect the rents, issues and profits of the Property and of any personal property located thereon with or without taking possession of the property affected hereby, and Trustor hereby absolutely and unconditionally presently assigns all such rents, issues and profits to Beneficiary. Beneficiary, however, hereby consents to the Trustor's collection and retention of such rents, issues and profits as they accrue and become payable so long as Trustor is not, at such times, in default under the Agreement or this Trust Deed. Upon any such default, Beneficiary may at any time, either in person, by agent, or by a receiver to be appointed by a court, without notice, (a) enter upon and take possession of the Property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and seek reimbursement for same from Trustor, less costs and expenses of operation and collection, including reasonable attorney fees, in such order as Beneficiary may determine; (b) perform such acts of repair or protection as may be necessary or proper to conserve the value of the Property; (c) lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate. Unless Trustor and Beneficiary agree otherwise in writing, any application of rents, issues or profits to any indebtedness to Beneficiary or the Bank shall not extend, postpone, delay, amend, alter or otherwise affect any obligation of Trustor hereunder or under the Loan Agreement. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice. Trustor also presently assigns to Beneficiary, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the Property, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Beneficiary. Delivery of written notice of Beneficiary's exercise of the rights granted herein, to any tenant occupying the Property shall be sufficient to require said tenant to pay said rent to the Beneficiary until further notice and without any liability to Trustor.

9. Environmental Matters. At its sole cost and expense, Trustor shall comply with all federal, state, and local laws, rules, regulations, and orders with respect to the discharge, generation, removal, transportation, storage, and handling of hazardous or toxic wastes or substances, pay immediately when due the cost of removal of any such wastes or substances, and keep the Property free of any lien imposed pursuant to such laws, rules, regulations, and orders. In the event Trustor fails to do so, Beneficiary may declare this Trust Deed to be in default. In addition, Trustor hereby

grants Beneficiary and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter the Property to inspect, conduct testing and to remove the hazardous wastes or substances. The costs of such inspection, testing and removal shall immediately become due to Beneficiary and shall be secured by this Trust Deed. Trustor shall indemnify Beneficiary and hold Beneficiary harmless from and against all loss, liability, damage, claim, judgment, cost, and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Beneficiary may incur as a result of or in connection with the assertion against Beneficiary of any claim relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto.

Trustor shall not install or permit to be installed on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal, state, or local laws, rules, regulations, or orders respecting such material. With respect to any such material currently present on the Property, Trustor shall promptly comply with such federal, state, or local laws, rules, regulations, or orders, at Trustor's expense. If Trustor shall fail to so comply, Beneficiary may declare this Trust Deed to be in default. In addition, Trustor hereby grants Beneficiary and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter the Property to inspect, conduct testing and to remove friable asbestos or any substance containing asbestos and deemed hazardous by federal, state, or local laws, rules, regulations, or orders respecting such material. The costs of such inspection, testing, and removal shall immediately become due to Beneficiary and shall be secured by this Trust Deed. Trustor shall indemnify and hold Beneficiary harmless from and against all loss, liability, damage, claim, judgment, cost and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of claims) that Beneficiary may incur as a result of or in connection with the assertion against Beneficiary of any claim relating to the presence or removal of any asbestos substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto.

Anything herein to the contrary notwithstanding, the indemnification obligations of Trustor under this Paragraph 10 shall be full recourse obligations of Trustor and shall survive repayment of the Loan and any termination, satisfaction, or foreclosure of this Trust Deed.

10. Condemnation. If title to any part of the Property shall be taken in condemnation proceedings, by right of eminent domain or similar action, or shall be sold, transferred, or conveyed under threat of condemnation, all awards, damages and proceeds are hereby assigned and shall be paid to Beneficiary. Trustor will promptly, and with due diligence, repair, alter and restore the remaining part of the Trust Property to its former condition substantially to the extent that the same may be feasible and so as to constitute a complete and useable unit.

11. Remedies Cumulative. All remedies provided in this Trust Deed are distinct and cumulative to any other right or remedy under this Trust Deed or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Acceleration; Remedies; Sale. Upon default by Trustor in the payment of any obligation under the Agreement or the Note or in the performance of any of the other terms,



provisions, or agreements hereunder or under the Agreement, the Trustee shall have the power of sale of the Property. If Beneficiary desires the Property to be sold, it shall deposit with Trustee this Trust Deed and all documents evidencing expenditures by Beneficiary in satisfaction of the Agreement, and shall deliver to Trustee a written notice of default and election to cause the Property to be sold, and the Trustee in turn shall prepare a similar Notice in the form required by law, which shall be duly filed for record by Trustee.

(a) After the lapse of such time as may be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in said notice of sale, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one (1) day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser his Deed conveying the Property sold, but without any covenant or warranty, express, or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at the sale.

(b) When Trustee sells pursuant to the powers herein, the Trustee shall apply the proceeds of the sale to payment of the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's Fees actually incurred, and then to the items in subparagraph (c) in the order there stated.

(c) After paying the items specified in subparagraph (b) if the sale is by Trustee, or the proper court and other costs of foreclosure and sale if the sale is pursuant to judicial foreclosure, the proceeds of sale shall be applied in the order stated to the payment of:

(i) Cost of any evidence of title procured in connection with such sale and of any revenue stamps;

(ii) All sums due and owing under the Note and the Agreement;

(iii) All sums expended by Beneficiary in satisfaction of the Agreement;

(iv) All sums secured by junior trust deeds mortgages or other lienholders;

(v) The remainder, if any, to the person legally entitled thereto.

13. Duties and Obligations of Trustee. (a) The duties and obligations of Trustee shall be determined solely by the express provisions of this Trust Deed and Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee; (b) No provision of this Trust Deed shall require Trustee to expend or risk his own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its right or powers, if it shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; (c) Trustee may consult with counsel of his own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon; (d) Trustee shall not be liable for any action taken by him in good faith and reasonably believed by him to be authorized or within the discretion or rights of powers conferred upon it by this Trust Deed.

14. Additional Security Instruments. Trustor, at its expense, will execute and deliver to the Trustee, promptly upon demand, such security instruments as may be required by Trustee, in form and substance satisfactory to Trustee, covering any of the Property conveyed by this Trust Deed, which security instruments shall be additional security for Trustor's faithful performance of all of the terms, covenants and conditions of this Trust Deed and the Loan Agreement. Such instruments shall be recorded or filed, and re-recorded and refiled, at Trustor's expense.

15. Sale or Transfer. If the Trustor shall sell, convey, transfer, or dispose of or further encumber the Property described in this Trust Deed, or any part of such Property, or any interest therein, or agree to do so without the written consent of the Beneficiary being first obtained, it shall constitute default hereunder.

16. Miscellaneous.

(a) In the event any one or more of the provisions contained in this Trust Deed shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Trust Deed, but this Trust Deed shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein.

(b) This Trust Deed shall be construed according to the laws of the State of Nebraska.

(c) This Trust Deed shall inure to and bind the heirs, legatees, devisees, administrators, executors, successors and assigns of the parties hereto.

(d) Trustor shall pay all taxes levied upon this Trust Deed.

(e) Whenever used herein, the singular number shall include the plural, the plural, the singular, the use of any gender shall be applicable to all genders.

17. Successor Trustee. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute the provisions of this Trust Deed. Upon such appointment and without conveyance to the successor Trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument by Beneficiary, containing reference to this Trust Deed and its place of record, which when recorded in the office of the Register of Deeds of the county or counties in which the Property is situated shall be conclusive proof of proper appointment of the successor Trustee. The foregoing power of substitution and the procedure therefore shall not be exclusive of the power and procedure provided for by law for the substitution of a Trustee or Trustees in the place of the Trustee.

18. Forbearance by Beneficiary or Trustee Not a Waiver. Any forbearance by Beneficiary or Trustee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any default of Trustor under this Trust Deed shall not be deemed to be a waiver of any other or similar defaults subsequently occurring.

19. Default. If there shall be a default under the Note, the Agreement, this Trust Deed or under any prior mortgage or other lien instrument, the Beneficiary may cure such default, and the amounts advanced by, and other costs and expenses of the Beneficiary in curing such default, with interest at the highest allowable rate from the time of the advances or payments may be collected hereunder at any time after the time of such advances or payments and shall be deemed to be secured hereby.

20. Option to Foreclose. Upon the occurrence of any default hereunder, Beneficiary shall have the option to foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property.

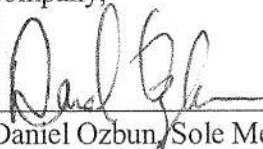
21. Trustor's Rights, Absent Default. Until any default in the payment of any amount due and owing under the Loan Agreement or until the breach of any covenant herein contained, the Trustor, its successors and assigns, shall possess and enjoy the Property, and receive the rents and profits therefrom. Upon release of Beneficiary's obligations to personally guarantee the amounts payable under the Loan Agreement, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Trust Deed to Trustee. Trustee shall reconvey the Property without warranty and without charge to the persons legally entitled thereto. The Grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay all costs of recording, if any.

22. Request for Notice. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address hereinbefore set forth.

23. Acknowledgment. Trustor agrees and acknowledges that (a) this Deed of Trust is not a mortgage, but a deed of trust and (b) that the power of sale provided for herein provides substantially different rights and obligations for Trustor than a mortgage in the Event of a Default or breach of any obligation hereunder.

IN WITNESS WHEREOF, the Trustor has executed this Trust Deed the day and year first above written.

ONEDMS, LLC, an Arizona limited liability company,

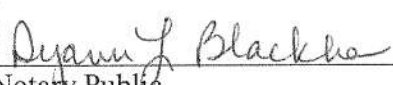
By:   
Daniel Ozbun, Sole Member

STATE OF Arizona )  
 ) ss.  
COUNTY OF Maricopa )

Before me, a Notary Public, qualified for said County, personally came Daniel Ozbun, Sole Member of ONEDMS, LLC, an Arizona limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and that the execution thereof was the signer's voluntary act and deed on behalf of said company.

WITNESS my hand and Notarial Seal this 10<sup>th</sup> day of May, 2013.



  
Notary Public



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot 1, in SWN INVESTMENTS NO. 3, a Subdivision as surveyed, platted and recorded, in Sarpy County, Nebraska.

Formerly known as:

A Tract of land located in the Southwest Quarter of Section 26 and the Southeast Quarter of Section 27, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, being all of Tax Lot 6 and a part of Tax Lot 4A1 in said Section 26 and a portion of Tax Lots 4A and 9 in Section 27 and more particularly described as follows:

Referring to the Southeast corner of Section 27, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska; thence due North (Assumed Bearing) along the East line of said Section 27 a distance of 1,002.00 feet to the Point of Beginning; thence along the Southerly right-of-way line of a dedicated Frontage Road on the following two courses: thence due East 160.22 feet; thence Northeasterly along a 421.67 feet radius curve to the left an arc distance of 393.84 feet to a point on the Northwesternly right-of-way line on the following three courses: thence South  $36^{\circ}30'05''$ W 209.42 feet; thence Southwesterly along a 1,045.92 feet radius curve to the right an arc distance of 503.85 feet; thence South  $64^{\circ}24'27''$ W 14.60 feet; thence North  $29^{\circ}38'21''$ W 312.49 feet to a point on the Southerly right-of-way line of a dedicated Frontage Road; thence along said right-of-way line on the following three courses: thence North  $60^{\circ}21'40''$ E 13.23 feet; thence along a 269.28 feet radius curve to the right an arc distance of 139.30 feet; thence due East 33.00 feet to a point on the East line of said Section 27; thence due North 8.00 feet along the East line of said Section 27 to the Point of Beginning.      2.44 Acres