

FILED SARPY CO. NE.

INSTRUMENT NUMBER

2003-58607

2003 OCT 10 A 11:44

*Steve J. Dowling*  
REGISTER OF DEEDS

COUNTER *SM* C.E. *SM*  
VERIFY *SM* D.E. *SM*  
PROOF *CM*  
FEES \$ 25.50  
CHECK# 11918  
CHG. \_\_\_\_\_ CASH \_\_\_\_\_  
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Pinnacle Bank

### THIRD PARTY DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made and entered into this 22nd day of September, 2003. The Trustors are Vernon D. Melby and Carol Melby, Husband and Wife, AND Jessica A. Melby / Fitton and Derrick J. Fitton, Husband and Wife ("Trustors"). The Trustee is Pinnacle Bank, whose address is 1200 Golden Gate Drive, Papillion, NE 68046 ("Trustee"). The Beneficiary is Pinnacle Bank, whose address is 1200 Golden Gate Drive, Papillion, NE 68046 ("Lender"). This Security Instrument secures: (a) the payment of all sums, with interest, advanced under paragraph 5 to protect the security of this Security Instrument; (b) payment of all amounts due upon that certain promissory note ("Note") dated September 22, 2003, in the principal sum of \$208,551.45, and executed by Big Red Car Wash. LLC ("Obligor"); and (c) the payment of the obligations described in Paragraph 22. For this purpose, Trustors irrevocably grant and convey to Trustee, in trust, with power of sale, the following described property located in Sarpy County, Nebraska:

Lot 1, Summerfield 2<sup>nd</sup> Addition Replat 1, a Subdivision, in Sarpy County, Nebraska

TRUSTORS COVENANT, that Trustors are lawfully seised of the estate hereby conveyed and have the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Trustors warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Trustors and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Obligor shall promptly pay upon demand of Lender all amounts due under the terms of the Note. In the event, for any reason, Obligor fails to do so, Lender shall be entitled to exercise all remedies upon default allowed to Lender hereunder.

2. Charges; Liens. Trustors shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Trustors shall pay these obligations directly to the person owed payment. Trustors shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Trustors make these payments directly, Trustors shall promptly furnish to Lender receipts evidencing the payments.

Trustors shall promptly discharge any lien which has priority over this Security Instrument unless Trustors: (a) agree in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contest in good faith the lien by, or defend against enforcement of the lien in, legal proceeding which in the Lender's opinion operates to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secure from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Trustors a notice identifying the lien. Trustors shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

3. Hazard Insurance. Trustors shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Trustors subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the rights to hold the policies and renewals. If Lender requires, Trustors shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Trustors shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Trustors.

Unless Lender and Trustors otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or if Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Trustors. If Trustors abandon the Property, or do not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the

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Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

4. **Preservation and Maintenance of Property; Leaseholds.** Trustors shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Trustors shall comply with the provisions of the lease, and if Trustors acquire fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

5. **Protection of Lender's Rights in the Property; Mortgage Insurance.** If Trustors fail to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 5, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 5 shall become additional debt of Trustors secured by this Security Instrument. Unless Trustors and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the highest rate allowed by applicable law and shall be payable, with interest, upon notice from Lender to Trustors requesting payment.

If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Trustors shall pay the premiums required to maintain the insurance in effect until such time as a requirement for the insurance terminates in accordance with Trustors' and Lender's written agreement or applicable law.

6. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Trustors notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

7. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Trustors. In the event of a partial taking of the Property, unless Trustors and Lender otherwise agree in writing, the amount of the proceeds determined by multiplying such proceeds by the following fraction: (a) the total amount of the sums secured immediately before taking, divided by (b) the fair market value of the Property immediately before the taking, shall be applied to any sums secured hereby. Any balance shall be paid to Trustors.

If the Property is abandoned by any of the Trustors, or if, after notice by Lender to Trustors that the condemnor offers to make an award or settle a claim for damages, Trustors fail to respond to Lender within 30 days after the date of notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

8. **Trustors Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment, change in the rate of interest, or modification of amortization of the sums secured by this Security Instrument granted by Lender to the Obligor or any successor of Obligor, or to any successor in interest of Trustors shall not operate to release the liability of the Trustors or Trustors' successors in interest hereunder. Lender shall not be required to commence proceedings against the Obligor, any successor of Obligor or any successor in interest of Trustors nor shall Lender be required to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Trustors or Trustors' successors in interest. Any forbearance by Lender in exercising any right or remedy under the Note, any security instrument securing the Note, or under this Security Instrument, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

9. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Trustors, subject to the provisions of paragraph 15. Trustors' covenants and agreements shall be joint and several.

10. **Loan Charges.** If the Note secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Note exceed the permitted limits, then; (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums

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already collected which exceeded permitted limits will be refunded to the Obligor on the Note.

11. **Legislation Affecting Lender's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 17. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of paragraph 15.

12. **Notices.** Any notice to Trustors provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Trustors designate by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designated by notice to Trustors. Any notice provided for in this Security Instrument shall be deemed to have been given to Trustors or Lender when given as provided in this paragraph.

13. **Governing Law; Severability.** This Security Instrument shall be governed by Nebraska law. In the event that any provision or clause of this Security Instrument conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument are declared to be severable.

14. **Trustors' Copy.** Trustors shall be given a copy of this Security Instrument.

15. **Transfer of the Property or a Beneficial Interest in Trustors.** If all or any part of the Property or any interest in it is sold or transferred (or if any beneficial interest in a Trustor is sold or transferred and such Trustor is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Obligor and Trustors notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Obligor or Trustors must pay all sums secured by this Security Instrument. If Obligor or Trustors fail to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Obligor or Trustors.

16. **Trustors' Right to Reinstate.** If Obligor and Trustors meet certain conditions, Trustors shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Obligor or Trustors: (a) pay Lender all sums which then would be due under this Security Instrument and the Note had no acceleration occurred; (b) cure any default of the Note, any security instrument securing the Note, and any other covenants or agreements of Obligor or Trustors; (c) pay all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's fees; and (d) take such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Obligor's and Trustors' obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Trustors, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraphs 11 or 15.

**NON-UNIFORM COVENANTS.** Trustors and Lender further covenant and agree as follows:

17. **Acceleration; Remedies:** Lender shall give notice to Trustors prior to acceleration following Trustors' breach of any covenant or agreement in this Security Instrument, or following the breach of any covenant or agreement of the Note, or any other security instrument securing the Note (but not prior to acceleration under paragraphs 11 and 15 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Trustors, by default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Trustors of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Trustors or Obligor to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument, without further demand, and may invoke the power of sale and other remedies permitted by applicable law. Lender shall be entitled to collection of all expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If the power of sale invoked, Trustee shall record a notice of default in each county in which any part of the Property is located and shall mail copies of such notice in the manner prescribed by applicable law to Trustors and to the other persons prescribed by applicable law. After the time required by applicable law,

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Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. Trustee, without demand on Trustors, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the purchaser Trustee's deed conveying the Property. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees as permitted by applicable law and reasonable attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

18. **Rents and Profits.** Lender shall have the right, power and authority during the continuance of this Security Instrument to collect the rents, issues and profits of the Property, and of any personal property located thereon, with or without taking possession affected hereby, and Trustors hereby absolutely and unconditionally assign all such rents, issues and profits to Lender. Lender, however, hereby consents to the Trustors' collection and retention of such rents, issues and profits as they accrue and become payable so long as Trustors are not, at such times, in default hereunder and provided further that Obligor is not in default under the Note. Upon any such default, Lender may at any time, either in person, by agent, or by a receiver to be appointed by a court, without notice and without regard to the adequacy of any security for the indebtedness hereby secured, (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 apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as Lender 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 Obligor and Lender agree otherwise in writing, any application of rents, issues or profits to any indebtedness secured hereby shall not extend or postpone the due date of any payments as provided in the Note or change the amount of such installments. 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. Trustors also assign to Lender, 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 Trustors by a lessee of the property to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustors agree to deliver such rents and deposits to the Lender. Delivery of written notice of Lender's exercise of the rights granted herein to any tenant occupying said premises shall be sufficient to require said tenant to pay said rent to the Lender until further notice.

19. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes, guarantees, or other documents evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such persons shall pay any recordation costs.

20. **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 court 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.

21. **Request for Notices.** Trustors request that copies of the notices of default and sale be sent to Trustors' address which is the Property Address. Trustors further request that copies of the notices of default and sale be sent to each person who is a party hereto at the address of such person set forth herein.

22. **Additional Secured Obligations.** In addition to the Note and the payments advanced under Paragraph 5, this Security Instrument is given to secure each and every debt, liability and obligation of every type and description, including guarantees or accommodations, which the Trustors may now or at any time hereafter owe to the Lender, whether such debt, liability or obligation now exists or is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several.

The total principal amount, exclusive of interest, of the obligations secured by this Security Instrument, including any future debts, advances or liabilities (but not including, however, any sums advanced for the protection of the Property or the Lender's interest herein) shall not exceed the sum of Two Hundred and Eight Thousand, Five Hundred Fifty-one and 45/100 Dollars (\$208,551.45), provided, however, that nothing contained herein shall constitute a commitment to make additional or future loans or advances in any amounts.

2003-58607D

BY SIGNING BELOW, Trustors accept and agree to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Trustors and recorded with it.

By [Signature] Trustor  
By [Signature] Trustor  
By Vernon Mulby Trustor  
By Carol Mulby Trustor

STATE OF Iowa  
COUNTY OF MONROIA ) ss.

The foregoing Deed of Trust was acknowledged before me this 27<sup>th</sup> day of SEPTEMBER, 2003,

by:

JESSICA MELBY : [Signature] DERRICK FITTON :  
VERNON MELBY : \_\_\_\_\_ :  
CAROL MELBY : \_\_\_\_\_ :

[Signature]  
Notary Public  
My Commission Expires 12-10-04



STATE OF NEBRASKA  
COUNTY OF Douglas ) ss.

The foregoing Deed of Trust was acknowledged before me this 3 day of OCTOBER, 2003, by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Notary Public  
My Commission Expires 3/11/04

