

**SECURITY NATIONAL BANK  
of Omaha**

3500 Farnam Street  
Omaha, Nebraska 68131



**DEED OF TRUST**

**THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT UNDER NEBRASKA LAW**

**PARTIES:** This Deed of Trust is made on NOVEMBER 14, 1995, among the Grantor, UPSTREAM BREWING COMPANY, L.L.C., BRIAN K. MAGEE, MANAGER ("Borrower"),  
SECURITY NATIONAL BK OF OMAHA  
whose residence address is DOUGLAS County, Nebraska ("Trustee"), and the Beneficiary,  
SECURITY NATIONAL BANK OF OMAHA, a corporation organized  
and existing under the laws of NEBRASKA whose address is 3500 FARNAM STREET, OMAHA, NE 68131 ("Lender").

**CONVEYANCE:** For value received, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the real property, of which Borrower is lawfully seized, described below and all buildings, fixtures, and existing and future improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and any appurtenances thereunto belonging (all called the "property").

**PROPERTY ADDRESS:** 514 SOUTH 11TH STREET, OMAHA, Nebraska 68102

**LEGAL DESCRIPTION:** (Street) (City) (Zip Code)  
LOT 8, BLOCK 165, ORIGINAL CITY OF OMAHA, AS SURVEYED AND LITHOGRAPHED, DOUGLAS COUNTY, NEBRASKA.

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GEORGE J. ...  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

located in DOUGLAS County, Nebraska.

**TITLE:** Borrower covenants and warrants title to the property, except for \_\_\_\_\_

**SECURED DEBT:** This deed of trust secures to Lender repayment of the secured debt and the performance of the covenants and agreements contained in this deed of trust and in any other document incorporated herein. Secured debt, as used in this deed of trust, includes any amounts Borrower owes to Lender under this deed of trust or under any instrument secured by this deed of trust, and all modifications, extensions and renewals thereof.

The secured debt is evidenced by (List all instruments and agreements secured by this deed of trust and the dates thereof.):

PROMISSORY NOTE DATED 11-14-95

**Future Advances:** The above amount is secured even though all or part of it may not yet be advanced. Future advances are contemplated and will be secured to the same extent as if made on the date this deed of trust is executed.

**Revolving line of credit agreement** dated \_\_\_\_\_, with initial annual interest rate of \_\_\_\_\_%. All amounts owed under this agreement are secured even though all amounts may not yet be advanced. Future advances under the agreement are contemplated and will be secured to the same extent as if made on the date this deed of trust is executed.

The above obligation is due and payable on MAY 14, 1996 if not paid earlier.

The total unpaid balance secured by this deed of trust at any one time shall not exceed a maximum principal amount of EIGHT HUNDRED THOUSAND AND NO/100 \* \* \* \* \* Dollars (\$ 800,000.00), plus interest, plus any amounts disbursed under the terms of this deed of trust to protect the security of this deed of trust or to perform any of the covenants contained in this deed of trust, with interest on such disbursements.

**Variable Rate:** The interest rate on the obligation secured by this deed of trust may vary according to the terms of that obligation.

A copy of the loan agreement containing the terms under which the interest rate may vary is attached to this deed of trust and made a part hereof.

**RIDERS:**  Commercial  \_\_\_\_\_  
**DESIGNATION OF HOMESTEAD**

Pursuant to the Farm Homestead Protection Act, designation of homestead  is attached to this deed of trust and made a part hereof  has been disclaimed; the disclaimer is attached to this deed of trust and made a part hereof.

**SIGNATURES:** By signing below, Borrower agree to the terms and covenants contained in this deed of trust, including those on page 2, and in any riders described above signed by Borrower.

UPSTREAM BREWING COMPANY, L.L.C.  
BY: BRIAN K. MAGEE, MANAGER

WYNKOOP BREWING COMPANY, MANAGER  
BY: JAMES CARUSO  
JAMES CARUSO, PRESIDENT/COO

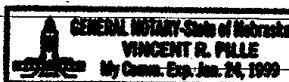
**ACKNOWLEDGMENT:** STATE OF NEBRASKA, DOUGLAS County ss:

The foregoing instrument was acknowledged before me on this 14th day of November, 1995  
by BRIAN K. MAGEE AND JAMES CARUSO, PRESIDENT OF WYNKOOP BREWING COMPANY

Corporate or Partnership Acknowledgment

of MANAGERS (Title(s))  
of UPSTREAM BREWING COMPANY, L.L.C. (Name of Corporation or Partnership)

My commission expires: \_\_\_\_\_ (Seal)



on behalf of the corporation or partnership.  
Vincent R. Pille (Notary Public)

This instrument was prepared by D. KRUEGER

1. **Payments.** Borrower agrees to make all payments on the secured debt in accordance with the terms of the promissory note and to pay to the lender, upon demand, the principal amount of the secured debt, plus interest, together with any other amounts due to the lender under the terms of the promissory note. Borrower agrees to pay to the lender, upon demand, the principal amount of the secured debt, plus interest, together with any other amounts due to the lender under the terms of the promissory note.

2. **Claims Against Title.** Borrower will pay all taxes, assessments, and other charges attributable to the property when due and will defend the property against any claims which would impair the lien of the secured debt. Lender may require Borrower to assign any rights, claims or defenses which Borrower may have against parties who supply labor or materials to improve or maintain the property.

3. **Insurance.** Borrower will keep the property insured under terms acceptable to Lender at Borrower's expense and for Lender's benefit. All insurance policies shall include a standard mortgage clause in favor of Lender. Lender will be named as loss payee or as the insured on any such insurance policy. If Lender requires mortgage insurance, Borrower agrees to maintain such insurance for as long as Lender requires.

4. **Property.** Borrower will keep the property in good condition and make all repairs reasonably necessary.

5. **Expenses.** Borrower agrees to pay all Lender's expenses, including reasonable attorneys' fees, if Borrower breaks any covenants in this deed of trust or in any obligation secured by this deed of trust. Borrower will pay these amounts to Lender as provided in Covenant 9 of this deed of trust.

6. **Prior Security Interests.** Unless Borrower first obtains Lender's written consent, Borrower will not make or permit any changes to any prior security interests or covenants to make payments when due.

7. **Assignment of Rents and Profits.** Borrower assigns to Lender the rents and profits of the property. Unless Borrower and Lender have agreed otherwise in writing, Borrower may collect and retain the rents as long as the property is not in default. If Borrower defaults, Lender, Lender's agent, or a court appointed receiver may take possession and manage the property and collect the rents. Any rents Lender collects shall be applied first to the costs of managing the property, including court costs and attorneys' fees, commissions to rental agents, and any other necessary related expenses. The remaining amount of rents will then apply to payments on the secured debt as provided in Covenant 1.

8. **Leaseholds; Condominiums; Planned Unit Developments.** Borrower agrees to comply with the provisions of any leases if this deed of trust is on a leasehold. If this deed of trust is on a unit in a condominium or a planned unit development, Borrower will perform all of Borrower's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

9. **Authority of Lender to Perform for Borrower.** If Borrower fails to perform any of Borrower's duties under this deed of trust, Lender may perform the duties or cause them to be performed. Lender may sign in Borrower's name or pay any amount if necessary for performance. If any construction on the property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the property. This may include completing the construction.

10. **Default and Acceleration.** If Borrower fails to make any payment when due or breaks any covenants under this deed of trust or any obligation secured by this deed of trust or any prior mortgage or deed of trust, Lender may accelerate the maturity of the secured debt and demand immediate payment and may invoke the power of sale and any other remedies permitted by applicable law.

11. **Request for Notice of Default.** It is hereby requested that copies of the notices of default and sale be sent to each person who is a party hereto, at the address of each person, as set forth herein.

12. **Power of Sale.** If the Lender invokes the power of sale, the Trustee shall first record in the office of the registrar of deeds of each county wherein the trust property or some part or parcel thereof is situated a notice of default containing the information required by law. The Trustee shall also mail copies of the notice of default to the Borrower, to each person who is a party hereto, and to other persons as prescribed by applicable law. Not less than one month after the Trustee records the notice of default, the Trustee shall give public notice of sale to the persons incorporated in or village and is used in farming operations controlled by the Trustee, without demand on Borrower, shall sell the property at public auction to the highest bidder. If required by the Farm Homestead Protection Act, Trustee shall offer the property in two separate sales as required by applicable law. Trustee may postpone sale of all or any part 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 contained in Trustee's deed shall be prima facie evidence of the truth of the statements contained 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, reasonable Trustee's fees, reasonable attorney's fees and reinstatement fees; (b) to all sums secured by this deed of trust, and (c) the balance, if any, to the persons legally entitled to receive it.

13. **Foreclosure.** At Lender's option, this deed of trust may be foreclosed in the manner provided by applicable law for foreclosure of mortgages on real property.

14. **Inspection.** Lender may enter the property to inspect it if Lender gives Borrower notice beforehand. The notice must state the reasonable cause for Lender's inspection.

15. **Condemnation.** Borrower assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the property. Such proceeds will be applied as provided in Covenant 1. This assignment is subject to the terms of any prior security agreement.

16. **Waiver.** By exercising any remedy available to Lender, Lender does not give up any rights to later use any other remedy. By not exercising any remedy upon Borrower's default, Lender does not waive any right to later consider the event a default if it happens again.

17. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** All duties under this deed of trust are joint and several. Any Borrower who co-signs this deed of trust but does not co-sign the underlying debt instrument(s) does so only to grant and convey that Borrower's interest in the property to the Trustee under the terms of this deed of trust. In addition, such a Borrower agrees that the Lender and Borrower may extend, modify or make any other changes in the terms of this deed of trust.

The duties and benefits of this deed of trust shall bind and benefit the successors and assigns of Lender and Borrower.

18. **Notice.** Unless otherwise required by law, any notice to Borrower shall be given by delivering it or by mailing it by certified mail addressed to Borrower at the property address or any other address that Borrower has given to Lender. Borrower will give any notice to Lender by certified mail to Lender's address as stated on page 1 of this deed of trust.

Any notice shall be deemed to have been given to Borrower or Lender when given in the manner stated above.

19. **Transfer of the Property or Beneficial Interest in the Borrower.** If all or any part of the property or any interest in it is sold or transferred without Lender's prior written consent, Lender may demand immediate payment of the secured debt. Lender may also demand immediate payment if the Borrower is not a natural person and a beneficial interest in the Borrower is sold or transferred. However, Lender may not demand payment in the above situations if it is prohibited by federal law as of the date of this deed of trust.

20. **Reconveyance.** When the obligation secured by this deed of trust has been paid, and Lender has no further obligation to make advances under the instruments secured by this deed of trust, the Trustee shall, upon written request by the Lender, reconvey the trust property. The Lender shall deliver to the Borrower, or to Borrower's successor in interest, the trust deed and the note or other evidence of the obligation so satisfied. Borrower shall pay any recordation costs.

21. **Successor Trustee.** Lender, at Lender's option, may reconvey Trustee and appoint a successor trustee by first mailing a copy of the substitution of trustee as required by applicable law, and then, by filing the substitution of trustee for record in the office of the registrar of deeds of each county in which the trust property, or some part thereof, is situated. The successor trustee, without conveyance of the property, shall succeed to all the power, duties, authority and title of the Trustee named in the deed of trust and of any successor trustee.