



MISC 2010012996



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Register of Deeds, Douglas County, NE
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2010012996

Agreement for Easement

Return To:
First Nebraska Title
2425 South 120th Street
Omaha, NE 68144

Box # 41

File # 10-111185

AGREEMENT FOR EASEMENT

This Agreement is entered into and made effective this 17 day of Dec., 2009, by and between First National Bank of Omaha, Trustee of the MPSB Trust, dated July 2, 2008, for the benefit of Douglas County School District No. 17, a/k/a the Millard Public School District, a Nebraska body politic (hereinafter "Trust") and Fleetwood-101, LLC, a Nebraska limited liability company (hereinafter "Fleetwood").

This Easement Agreement is granted with respect to the following facts:

- A. Fleetwood owns Omaha Industrial Foundation District No. 3 Replat 11 Condominium, Units 1 thru 4 inclusive, and common areas, being a condominium addition to the City of Omaha consisting of Units 1 thru 4 inclusive and common areas being a subdivision of Lot 1, Omaha Industrial Foundation District No. 3 Replat 11, a subdivision located in the NE 1/4 of Section 1, and also the NW 1/4 of said Section 1, all located in Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska. 61-28686
- B. Trust owns Lot 2, Omaha Industrial Foundation District No. 3, Replat 11, being a Replat of Lot 2, Omaha Industrial Foundation - District No. 3 Replat 10, a Subdivision located in the NW 1/4 of Section 1, Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska. 61-28684
- C. The parties have entered into an agreement concerning the release of a certain easement, granted under that certain Agreement for Easement recorded as Instrument No. 2007052555 in the office of the Douglas County, Nebraska Register of Deeds.
- D. The parties desire to enter into this agreement whereby Trust grants and conveys to Fleetwood, a nonexclusive driveway easement over, upon and across that portion of Lot 2 described on Exhibit "A" for limited vehicular ingress and egress, as further set forth herein, across Lot 2 for the benefit of Condominium Units 1-4 and provide for the release and termination of the Easement recorded as Instrument No. 2007052555 in the office of the Douglas County, Nebraska Register of Deeds.

NOW THEREFORE, in consideration of the premises and mutual covenants, Trust hereby creates and grants to Fleetwood, an easement over a portion of Lot 2 all as more particularly described under the following provisions:

1. Easement Area: The easement granted by Trust in favor of Fleetwood over Lot 2 is described on Exhibit "A" attached hereto (the "Easement Area").

2. Easement Released: The existing easement being released and terminated by Fleetwood over Lot 2 is described on Exhibit "B" attached hereto (the "Released Easement"). Fleetwood shall execute a Release of Easement, in the form as attached hereto as Exhibit "C", concerning the property described on Exhibit "B" attached hereto.
3. Beneficial Purpose of Easement: The easement granted and conveyed by Trust in favor of Fleetwood, shall be non-exclusive and shall be used by Fleetwood, its licensees and invitees for driveway access purposes only to provide access for passenger and commercial delivery vehicles, of no more than two axles, to and from the Frontage Road shown in Exhibit "A". Vehicles with more than two axles, or with a vehicle weight rating in excess of 25,000 lbs. GVWR, including any trailer or any such commercial vehicle towing a vehicle or trailer with a gross vehicle weight rating exceeding 10,000 lbs. are prohibited from use of such easement.

During the initial resurfacing of the presently existing hard surface on the easement area within Lot 2, Fleetwood shall be granted reasonable access to Condominium Units 1 thru 4. Said temporary access may be necessary during construction/resurfacing phases, but reasonable access shall be allowed to Condominium Units 1 thru 4.

4. Surfaces: Trust shall (at the joint cost of Trust and Fleetwood as described herein) maintain in good repair the presently existing hard surface on the Easement Area within Lot 2 and shall not permit any structure or other use within the Easement Area which would permanently inhibit or interfere with the ingress or egress rights granted herein. Fleetwood agrees, on behalf of itself and its successors in ownership of Condominium Units 1 thru 4, to contribute thirty percent (30%) of the cost of all such maintenance of the Easement Area, with the other seventy percent (70%) of such costs to be borne by Trust or its successors in ownership of Lot 2. Trust and Fleetwood agree, on behalf of themselves and their successors in ownership of Condominium Units 1 thru 4 and Lot 2, to share equally (fifty percent (50%) Trust and fifty percent (50%) Fleetwood) the cost for snow removal on the Easement Area as described in Exhibit "A". The shared cost assessment to Fleetwood for maintenance and snow removal shall not commence until the completion of any building(s) upon Condominium Units 1 thru 4. If during the term of this easement, there is a material change in the traffic flow over the Easement Area, the parties will negotiate in good faith for an equitable adjustment to the maintenance cost sharing percentage set forth herein.
5. Term: This easement hereby created and established shall be perpetual.
6. Easement Running with the Land: The easement granted herein shall run with the land and be binding upon Lot 2, and inure to the benefit of Fleetwood and its successors and assigns with respect to Condominium Units 1 thru 4.

7. Parking: No parking shall be permitted in the Easement Area nor shall the Easement Area otherwise be used in a manner so as to prevent the free and uninterrupted flow of traffic and use of the Easement Area.
8. Purpose: Nothing herein contained shall be deemed to be a gift or a dedication of the Easement Area to the general public or for any public purposes whatsoever, it being the intention of the parties that the easement herein granted shall be strictly limited to and for the purposes herein expressed.
9. Eminent Domain/Conveyance: In the event that any part of the Easement Area shall be taken by eminent domain or conveyance in lieu thereof or by any other similar proceedings, Trust shall be entitled to the entirety of the award for such taking and Fleetwood shall not be entitled to any portion of such award. Nothing contained herein shall be construed so as to waive or relinquish the right or rights of Trust to initiate eminent domain or similar proceedings.
10. Amendments: This Agreement and the easement created by this Agreement may be released or amended at any time by a written agreement for that purpose entered into by all of the titleholders of Condominium Units 1 thru 4 and Lot 2, and all mortgagees holding mortgages on Condominium Units 1 thru 4 and Lot 2. Any such agreement shall be filed for record in the office of the Register of Deeds of Douglas County, Nebraska.
11. Violations: In the event of any violation or threatened violation by any owner or occupant of any portion of Condominium Units 1 thru 4 or Lot 2 of any of the terms, covenants and conditions of this Agreement, any or all of the owners and mortgagees of Condominium Units 1 thru 4 or Lot 2 shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all of the remedies available by statute, at law and in equity.
12. Waiver: No delay or omission on the part of any party who is hereafter the owner of either Condominium Units 1 thru 4 or Lot 2 in the exercise of any right accruing on any default of any other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any party of a breach or a default in the observance or performance of any of the terms and conditions of this Agreement by any other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Agreement. No breach, whether or not material, of the obligations imposed or created by this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any other manner, any other rights or remedies which any party may have under or by reason of any breach of the provisions of this Agreement. If any provision, or portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the

application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby; the remainder of this Agreement shall be given effect as if such invalid or inoperative portion had not been included. It shall not be deemed that any such invalid provision affects the consideration for this Agreement and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, Millard and Fleetwood have executed this Agreement for Easement the day and year first above written.

FIRST NATIONAL BANK OF OMAHA,
TRUSTEE OF THE MPSB TRUST, dated
July 2, 2008.

By:

Its

SR. TRUST OFFICER
John E. Lenihan

FLEETWOOD - 101, LLC

By:

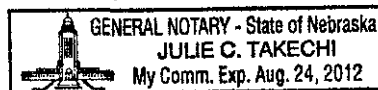
Its Manager

Ray Trimble

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 17 day of December, 2009, by John E. Lenihan, as Sr. Trust Officer and on behalf of First National Bank of Omaha, Trustee of the MPSB Trust, dated July 2, 2008.

Julie C. Takechi
Notary Public



STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 23 day of Dec., 2009, by Ray Trimble, as Manager and on behalf of FLEETWOOD -101, LLC.

Theresa Hancock
Notary Public

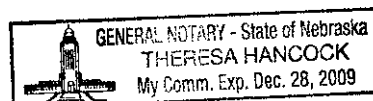
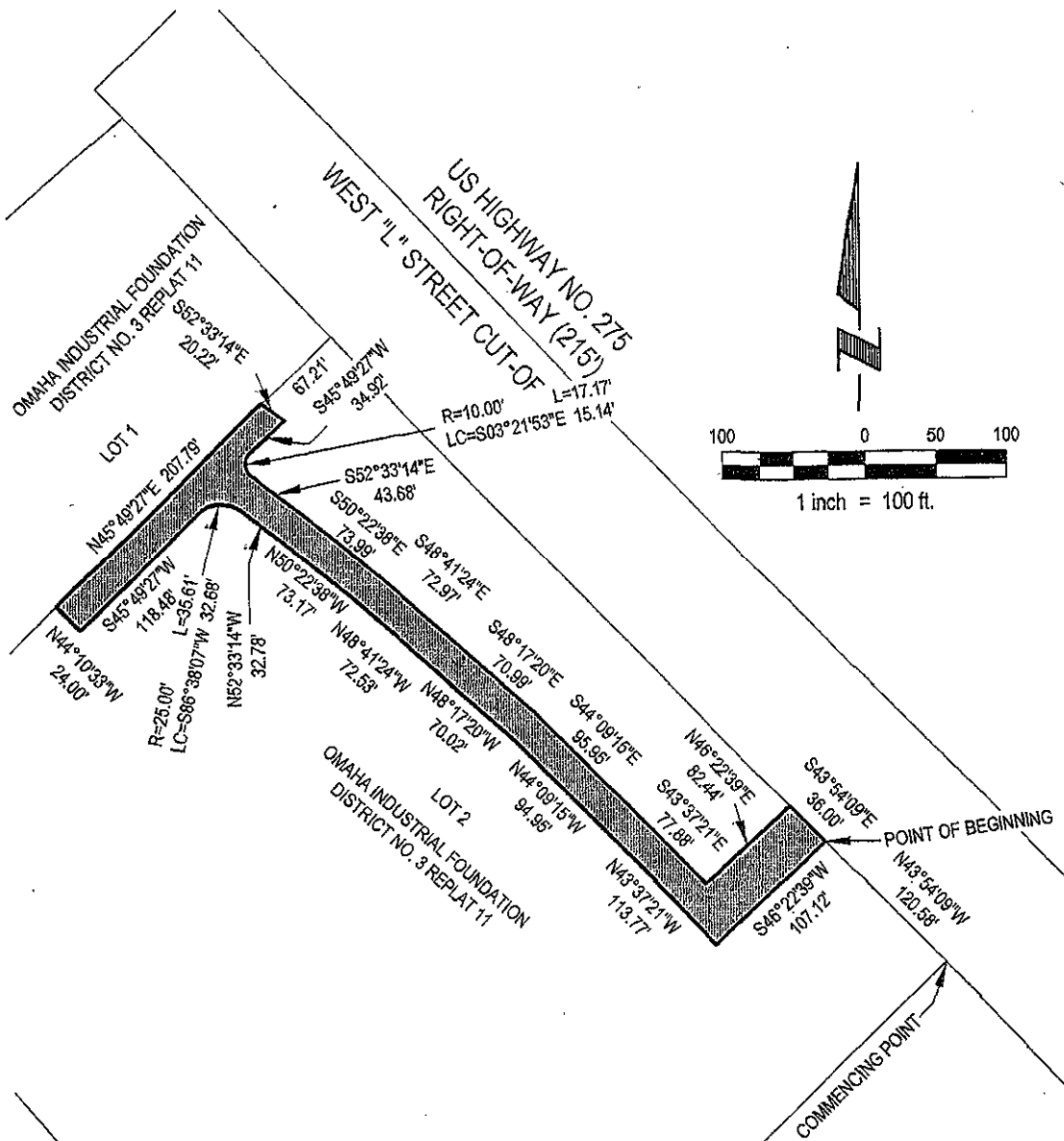


EXHIBIT "A"



SHEET 1 OF 2 - SEE SHEET 2 OF 2 FOR LEGAL DESCRIPTION



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
330 NORTH 117TH STREET, OMAHA, NE 68154 PHONE: (402) 855-4700

Drawn by: WAC Chkd by: WAC 8-24-09 Chkd by: _____

Job No.: P2006.455.003 Date: 8/21/2009 Book No.: XXXXX

PERMANENT ACCESS EASEMENT
LOT 2, OMAHA INDUSTRIAL FOUNDATION - DISTRICT
NO. 3 REPLAT 11
DOUGLAS COUNTY, NEBRASKA

EXHIBIT "A"

LEGAL DESCRIPTION

A PERMANENT ACCESS EASEMENT LOCATED IN LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, A SUBDIVISION LOCATED IN THE NORTH 1/2 OF SECTION 1, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST "L" STREET CUT-OFF; THENCE N43°54'09"W (ASSUMED BEARING) ALONG THE NORTHERLY LINE OF SAID LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF WEST "L" STREET CUT-OFF, A DISTANCE OF 120.58 FEET TO THE POINT OF BEGINNING; THENCE S46°22'39"W, A DISTANCE OF 107.12 FEET; THENCE N43°37'21"W, A DISTANCE OF 113.77 FEET; THENCE N44°09'15"W, A DISTANCE OF 94.95 FEET; THENCE N48°17'20"W, A DISTANCE OF 70.02 FEET; THENCE N48°41'24"W, A DISTANCE OF 72.53 FEET; THENCE N50°22'38"W, A DISTANCE OF 73.17 FEET; THENCE N52°33'14"W, A DISTANCE OF 32.78 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET, A DISTANCE OF 35.61 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S86°38'07"W, A DISTANCE OF 32.68 FEET; THENCE S45°49'27"W, A DISTANCE OF 118.48 FEET; THENCE N44°10'33"W, A DISTANCE OF 24.00 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING THE EASTERLY LINE OF LOT 1, SAID OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11; THENCE N45°49'27"E ALONG SAID WESTERLY LINE OF LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 1, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, A DISTANCE OF 207.79 FEET; THENCE S52°33'14"E, A DISTANCE OF 20.22 FEET; THENCE S45°49'27"W, A DISTANCE OF 34.92 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 10.00 FEET, A DISTANCE OF 17.17 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S03°21'53"E, A DISTANCE OF 15.14 FEET; THENCE S52°33'14"E, A DISTANCE OF 43.68 FEET; THENCE S50°22'38"E, A DISTANCE OF 73.99 FEET; THENCE S48°41'24"E, A DISTANCE OF 72.97 FEET; THENCE S48°17'20"E, A DISTANCE OF 70.99 FEET; THENCE S44°09'15"E, A DISTANCE OF 95.95 FEET; THENCE S43°37'21"E, A DISTANCE OF 77.88 FEET; THENCE N46°22'39"E, A DISTANCE OF 82.44 FEET TO A POINT ON SAID NORTHERLY LINE OF LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF WEST "L" STREET CUT-OFF; THENCE S43°54'09"E ALONG SAID NORTHERLY LINE OF LOT 2, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF WEST "L" STREET CUT-OFF, A DISTANCE OF 36.00 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT ACCESS EASEMENT CONTAINS AN AREA OF 19,672 SQUARE FEET OR 0.452 ACRES, MORE OR LESS.

SHEET 2 OF 2 - SEE SHEET 1 OF 2 FOR EASEMENT



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
330 NORTH 110TH STREET OMAHA, NE 68154 PHONE (402) 855-4700

Drawn by: WAC Chkd by: WAC 8-24-09 Chkd by: _____
Job No.: P2006.455.003 Date: 8/21/2009 Book No.: XXXXX

PERMANENT ACCESS EASEMENT
LOT 2, OMAHA INDUSTRIAL FOUNDATION - DISTRICT
NO. 3 REPLAT 11
DOUGLAS COUNTY, NEBRASKA

EXHIBIT "B"

LOT 1
OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO.3
REPLAT 10

LOT 1
OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO.3
REPLAT 11

LOT 2
OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO.3
REPLAT 11

LOT 1
OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO.3
REPLAT 4

US HIGHWAY NO. 275 RIGHT-OF-WAY (215')

FRONTAGE ROAD

UNION PACIFIC RAILROAD RIGHT-OF-WAY (100')

CORPORATE WARRANTY DEED
EXCEL REAL PROPERTY, LLC
INSTRUMENT NO. 2003114506

CORPORATE WARRANTY DEED
EXCEL REAL PROPERTY, LLC
INSTRUMENT NO. 2003114505

LEGAL DESCRIPTION

AN INGRESS AND EGRESS EASEMENT LOCATED IN LOT 2, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, A SUBDIVISION LOCATED IN THE NE 1/4 OF SECTION 1, AND ALSO THE NW 1/4 OF SAID SECTION 1; ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERLY CORNER OF SAID LOT 2, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, SAID POINT ALSO BEING THE NORTHERLY CORNER OF LOT 1, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 4, A SUBDIVISION LOCATED IN SAID NE 1/4 OF SECTION 1, SAID POINT ALSO BEING ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF A FRONTAGE ROAD; THENCE N45°49'27"E (ASSUMED BEARING) ALONG THE NORTHEASTERLY LINE OF SAID LOT 2, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF A FRONTAGE ROAD, A DISTANCE OF 107.31 FEET TO THE POINT OF BEGINNING; THENCE S40°05'01"W, A DISTANCE OF 63.62 FEET; THENCE N45°10'23"W, A DISTANCE OF 485.46 FEET; THENCE S45°49'27"W, A DISTANCE OF 155.23 FEET; THENCE N41°10'33"W, A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHWESTERLY LINE OF LOT 1, SAID OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING THE SOUTHEASTERLY LINE OF SAID LOT 1, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11; THENCE N45°49'27"E ALONG SAID NORTHWESTERLY LINE OF LOT 1, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID SOUTHEASTERLY LINE OF LOT 1, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, A DISTANCE OF 178.67 FEET; THENCE S45°15'23"E, A DISTANCE OF 485.99 FEET; THENCE N48°05'01"E, A DISTANCE OF 40.78 FEET TO A POINT ON SAID NORTHEASTERLY LINE OF LOT 2, OMAHA INDUSTRIAL FOUNDATION-DISTRICT NO. 3 REPLAT 11, SAID LINE ALSO BEING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF A FRONTAGE ROAD; THENCE S43°54'09"E, A DISTANCE OF 49.58 FEET TO THE POINT OF BEGINNING.

SAID INGRESS AND EGRESS EASEMENT CONTAINS AN AREA OF 18,014 SQUARE FEET OR 0.437 ACRES, MORE OR LESS.

Release of Easement

This Release of Easement made this 23 day of Dec, 2009, by Fleetwood-101, LLC, a Nebraska limited liability company, hereafter "Fleetwood", in favor of First National Bank of Omaha, Trustee of the MPSB Trust, dated July 2, 2008, hereinafter "Trust".

WHEREAS Fleetwood owns Omaha Industrial Foundation District No. 3 Replat 11 Condominium, Units 1 thru 4 inclusive, and common areas, being a condominium addition to the City of Omaha consisting of Units 1 thru 4 inclusive and common areas being a subdivision of Lot 1, Omaha Industrial Foundation District No. 3 Replat 11, a subdivision located in the NE 1/4 of Section 1, and also the NW 1/4 of said Section 1, all located in Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska.

WHEREAS Trust owns Lot 2, Omaha Industrial Foundation District No. 3, Replat 11, being a Replat of Lot 2, Omaha Industrial Foundation - District No. 3 Replat 10, a Subdivision located in the NW 1/4 of Section 1, Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska.

WHEREAS Fleetwood is the beneficial owner of an easement on and across Lot 2 for the benefit of Lot 1, as more particularly set forth in that certain Agreement for Easement, recorded as Instrument No. 2007052555, in the office of the Douglas County, Nebraska register of deeds.

WHEREAS pursuant to an agreement between Fleetwood and Trust, Fleetwood desires to cancel, relinquish, annul and convey said easement area to Trust;

EX C

NOW THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, receipt of which is hereby acknowledged, Fleetwood-101, LLC, a Nebraska limited liability company, does hereby release, relinquish, quitclaim and abandon unto First National Bank of Omaha, Trustee of the MPSB Trust, the easement area set forth and further described on Exhibit "A" attached hereto and hereby made a part hereof.

Dated this 23 day of December, 2009.

FLEETWOOD-101, LLC

By: 

It's Manager

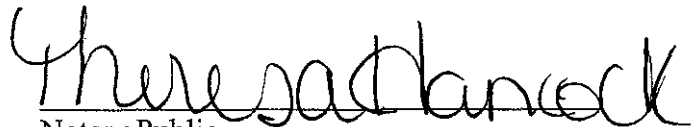
Ray Trimble

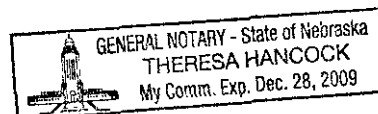
STATE OF NEBRASKA)

) ss:

COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me, a Notary Public, this 23 day of Dec., 2009, by Ray Trimble, as Manager and on behalf of Fleetwood-101, LLC.


Notary Public



[illegible]