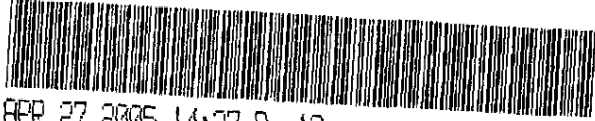




MTG 2005047543



APR 27 2005 14:27 P 13

Received - DIANE L. BATTIATO
Registrar of Deeds, Douglas County, NE
4/27/2005 14:27:08.34



2005047543

-SPACE ABOVE RESERVED FOR RECORDER'S USE-

THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT THAT SECURES AN OBLIGATION THAT BORROWER/TRUSTOR HAS INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT TO THE HEREIN DESCRIBED PROPERTY AND IS A CONSTRUCTION SECURITY INTEREST IN SAID PROPERTY.

CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

Loan No. 2491263

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "Instrument") is made this 26 day of April, 2005, by FIVE FOUNTAINS, LLC, a Nebraska limited liability company, whose address is 17809 Pacific Street, Omaha, Nebraska 68118 (the "Borrower"), to COMMERCIAL FEDERAL BANK, a Federal Savings Bank (the "Trustee"), whose address is 13220 California Street, Omaha, Nebraska 68154, for the benefit of COMMERCIAL FEDERAL BANK, A Federal Savings Bank (the "Lender"), whose address is 13220 California Street, Omaha, Nebraska 68154.

WITNESSETH:

Borrower, as trustor, irrevocably grants, conveys, transfers and assigns to Trustee, in trust, with power of sale, that real property in Douglas County, Nebraska, described as on Exhibit "A" attached hereto.

TOGETHER with all interest which Borrower now has or may hereafter acquire in or to said property and in and to: (a) all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said property; and (b) all buildings, structures, tenements, improvements, fixtures, and appurtenances now or hereafter placed thereon, including, but not limited to, all fixtures, apparatus, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with said property, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (c) all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Borrower and shares of stock pertaining to such water or water rights, ownership of which affects said property; **SUBJECT, HOWEVER,** to the terms and conditions herein set forth. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to evidence or confirm the lien of this Instrument on any such properties. **It is understood that this Deed of Trust secures a loan that may be used in part for the construction of improvements and this Deed of Trust expressly covers all improvements, now existing or hereafter to be erected or located on this Property and this Deed of Trust shall remain a first lien Deed of Trust against the subject property, and any improvements placed or erected thereon, to secure payment of the Note for the term thereof. The properties conveyed to Trustee hereunder are hereinafter referred to as the "Property."**

FOR THE PURPOSE OF SECURING:

- (1) Payment of the sum of up to Six Million Two Hundred Twenty-Two Thousand Dollars (\$6,222,000.00) with interest thereon, according to the terms of a Promissory Note of even date herewith and having a scheduled due date of November 1, 2008, made by Borrower payable to Lender or to order, and all modifications, extensions or renewals thereof, together with any future advances made by Lender (the "Note").
- (2) Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Lender pursuant to this Instrument (herein "Future Advances"); and (b) as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Trustee or Lender under any provision of this Instrument.
- (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Borrower relating to the loan secured hereby, including the Construction Loan Agreement (together with the Note and this Instrument are referred to as the "Loan Documents").
- (4) Performance by Borrower of each and every monetary obligation to be performed by Borrower under any recorded covenants, conditions and restrictions pertaining to the Property.

F
 13
 17.15.11
 01-16-2002
 185896-1
 SCIN
 IV

OT
 CRS #64
 RECORD 9th
 94503
 65.50

EXHIBIT "A"

LEGAL DESCRIPTION

That part of the Southwest Quarter of Section 17, Township 15 North, Range 11 East of the 6th P.M., in Douglas County, Nebraska, described as follows:

Commencing at the southeast corner of said Southwest Quarter of Section 17;

Thence North $02^{\circ}57'53''$ West (bearings referenced to the final plat of West Dodge Station, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska) for 163.46 feet along the east line of said Southwest Quarter of Section 17 to the north right of way line of West Dodge Road and the TRUE POINT OF BEGINNING; thence along said North right of way line for the following 3 courses:

- 1) Thence South $87^{\circ}15'12''$ West for 1044.59 feet;
- 2) Thence South $67^{\circ}57'48''$ West for 69.52 feet;
- 3) Thence North $89^{\circ}15'46''$ West for 213.16 feet to the west line of the East Half of said Southwest Quarter of Section 17;

Thence North $02^{\circ}57'36''$ West for 1465.20 feet along said West line; thence South $87^{\circ}12'47''$ West for 1242.52 feet to the east right of way line of 192nd Street;

Thence along said East right of way line for the following 4 courses:

- 1) Thence along a curve to the left (having a radius of 7689.00 feet and a long chord bearing North $04^{\circ}26'17''$ West for 364.78 feet) for an arc length of 364.81 feet;
- 2) Thence North $05^{\circ}49'58''$ West for 227.51 feet;
- 3) Thence along a curve to the right (having a radius of 7589.00 feet and a long chord bearing North $04^{\circ}27'11''$ West for 379.18 feet) for an arc length of 379.22 feet;
- 4) Thence North $02^{\circ}30'20''$ West for 57.18 feet to the north line of said Southwest Quarter of Section 17;

Thence North $87^{\circ}11'40''$ East for 2595.56 feet along said north line to the northeast corner of the Southwest Quarter of Section 17;

Thence South $02^{\circ}57'53''$ East for 2484.99 feet along the East line of said Southwest Quarter to the point of beginning.