

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2005-18571

2005 JUN -6 P 1:22 9

Glenn J. Lawley
REGISTER OF DEEDS

COUNTER 15 C.E. P
VERIFY OK D.E. P
PROOF OK
FEES \$ 190.00
CHECK # 1485713
CNG. _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

**DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS, made this 2 day of June, 2005, among Dodge-Lots Joint Venture, a Nebraska joint venture, as Trustor, First National Bank of Omaha, a national banking association, as Trustee, and First National Bank of Omaha, a national banking association, as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, the following described real estate (the "Real Estate"):

The real estate in Sarpy County, Nebraska, legally described on Exhibit "A" attached hereto and by this reference incorporated herein.

together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or

A

in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The Real Estate, Improvements and the additional property above described are hereinafter referred to as the "Mortgaged Property."

FOR THE PURPOSE OF SECURING EACH OF THE FOLLOWING (the "Secured Obligations"):

A. Payment of the principal sum of Four Million Two Hundred Thousand Dollars (\$4,200,000) evidenced by that certain promissory note dated of even date herewith (hereinafter referred to as the "Promissory Note") issued by Trustor in said amount and payable to the order of Beneficiary, together with interest thereon, late charges and prepayment bonuses according to the terms of the Promissory Note and all renewals, extensions and modifications thereof.

B. Performance, discharge of and compliance with every other obligation, covenant and agreement of Trustor in the Promissory Note, other than as set forth in A. above.

C. Performance, discharge of and compliance with every obligation, covenant and agreement of Trustor contained herein, incorporated herein by reference or contained in any other "Loan Document," as defined in the Promissory Note or in any other agreement now or hereafter at any time given by Trustor to secure any indebtedness or obligation hereby secured, or any part thereof.

D. Payment of all fees and charges of Beneficiary, whether or not set forth herein.

E. Payment of future advances necessary to protect the Mortgaged Property.

F. Payment of future advances to be made at the option of Trustor and Beneficiary.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Mortgaged Property, subject only to the Permitted Exceptions set forth in Exhibit "B" attached hereto and by this reference incorporated herein as if fully set forth.

2. **Maintenance:** To keep the Mortgaged Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof, to comply with the provisions of restrictions affecting the Mortgaged Property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon the Mortgaged Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

7

(d) Trustee and Beneficiary hereby agree to execute such documents and take such actions as shall reasonably be required for the subdivision platting of the Real Estate into the Hyda Hills subdivision and for the Sanitary and Improvement District's installation of improvements.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

BORROWER:

DODGE-LOTS JOINT VENTURE, a Nebraska joint venture

By: **DODGE LAND CO.**, a Nebraska corporation

By: *W. L. Morrison, Jr.*
W. L. Morrison, Jr., President

By: **LOTS, INC.**, a Nebraska corporation

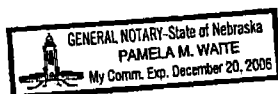
By: *W. L. Morrison, Jr.*
W. L. Morrison, Jr., President

FIRST NATIONAL BANK OF OMAHA, a national banking association

By: *Steven W. Maguire*
Title: V.P.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

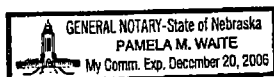
The foregoing instrument was acknowledged before me this 2 day of June, 2005, by W. L. Morrison, Jr., President of Dodge Land Co., a Nebraska corporation, joint venture partner of Dodge-Lots Joint Venture, a Nebraska joint venture, on behalf of the joint venture.



Pamela M. Waite
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 2 day of June, 2005, by W. L. Morrison, Jr., President of Lots, Inc., a Nebraska corporation, joint venture partner of Dodge-Lots Joint Venture, a Nebraska joint venture, on behalf of the joint venture.



Pamela M. Waite
Notary Public

00225042

K

EXHIBIT "A"

Legal Description

Lots 1 through 249, inclusive, Hyda Hills, a subdivision as surveyed, platted and recorded in ~~Douglas~~ ^{SARPY} County, Nebraska

And

The real estate commencing at the Northeast Corner of Lot 249, Hyda Hills Subdivision, in the Southwest Quarter of Section 15, Township 13 North, Range 13 East of the 6th Principal Meridian, Sarpy County, Nebraska, on the North Line of said Southwest Quarter, and also the Point of Beginning; thence North 89 degrees 17 minutes 40 seconds East on Said North Line, for a distance of 1,795.51 feet to the Center of Said Section 15; thence South 00 degrees 10 minutes 50 seconds East on the East line of Said Southwest Quarter, a distance of 1,915.80 feet, to the Northeast Corner of Lot 51, Hyda Hills Subdivision; thence South 89 degrees 49 minutes 10 seconds West, 138 feet; thence North 00 degrees 10 minutes 50 seconds West, 17.53 feet; thence South 89 degrees 49 minutes 10 seconds West, 180.00 feet; thence North 00 degrees 10 minutes 50 seconds West, 47.66 feet; thence South 89 degrees 49 minutes 10 seconds West, 620.00 feet; thence North 00 degrees 10 minutes 50 seconds West, 1,091.98 feet; thence South 89 degrees 17 minutes 40 seconds West, 35.53 feet; thence North 00 degrees 42 minutes 20 seconds West, 130 feet; thence South 89 degrees 17 minutes 40 seconds West, 762.82 feet; thence North 00 degrees 42 minutes 20 seconds West, 180.00 feet; thence South 89 degrees 17 minutes 40 seconds West, 80.31 feet; thence North 00 degrees 42 minutes 20 seconds West; 130.00 feet; thence North 89 degrees 17 minutes 40 seconds East, 13.50 feet; thence North 00 degrees 42 minutes 20 seconds West; 130.00 feet; thence North 89 degrees 17 minutes 40 seconds East, 14.56 feet; thence North 00 degrees 42 minutes 20 seconds West, 180.00 feet to the Point of Beginning.

2005-18571 L

EXHIBIT "B"

Permitted Exceptions

1. Return of Appraisers recorded April 11, 1980 in Book 53 at Page 233 of the Records of Sarpy County, Nebraska.
2. MUD Notice recorded March 11, 1974 in Book 47 at Page 128 of the Records of Sarpy County, NE.
3. Plat and Dedication recorded May 24, 2005 at Instrument Number 2005-16910 of the Records of Sarpy County, Nebraska.

Todays Date 07/16/2010

Indexed Thru 07/15/2010

Imaged Thru 07/14/201

Book Type ☒ Book ☐ Page ☐ Image ☐ Reset

Inst # Inst Type

Grantor

Grantee

Subdivision

Search by Acronym ☒

Search by Name ☐

Lot

Block

Section Township Range ☐ Quarter - Quarter of the

ScratchPad Date

Todays Date

Select Result Page Size

Submit

Reset

Acronym List

Use the Landscape setting on your printer to print the result screen.