



MTG 2003155392



AUG 16 2003 09:36 P 7

RECEIVED

Filed: AS RECEIVED

WHEN RECORDED MAIL TO:  
NEBRASKA STATE BANK OF OMAHA  
MAIN OFFICE  
3211 N 90th  
OMAHA, NE 68134

*mtg* FEE 37.00 *See below*  
FB 01-66000

SKP 30-16-11 C/O \_\_\_\_\_ COMP \_\_\_\_\_ FOR RECORDER'S USE ONLY

*F-7/4*

DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_  
DEED OF TRUST 5375

MAXIMUM LIEN. The lien of this Deed of Trust shall not exceed at any one time \$878,365.45.

THIS DEED OF TRUST is dated July 12, 2003, among JUDITH J. KNUDSEN and RUSSELL A. KNUDSEN, WIFE AND HUSBAND AS JOINT TENANTS, whose address is 520 BRANDING IRON DRIVE, ELKHORN, NE 68022 ("Trustor"); NEBRASKA STATE BANK OF OMAHA, whose address is MAIN OFFICE, 3211 N 90th, OMAHA, NE 68134 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor conveys to Trustee in trust, WITH POWER OF SALE, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in DOUGLAS County, State of Nebraska:

*OC-35963*  
PARCEL A: LOT 38, SKYLINE ESTATE ADDITION, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA A/K/A 520 BRANDING IRON DRIVE, ELKHORN, NE 68022

*63-33640*  
PARCEL B: LOT 443, ROANOAKE ESTATES, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA A/K/A 11728 GRAND AVENUE, OMAHA, NE 68164

*OC-44574*  
PARCEL C: LOT 5, WINTERBURN 5TH ADDITION, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA A/K/A 394 CLEVELAND CIRCLE, ELKHORN, NE 68022

*01-66000*  
PARCEL D: THAT PART OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, LYING SOUTHWEST OF THE CENTERLINE OF A TRIBUTARY TO THE NORTH BRANCH OF THE PAPILLION CREEK AND EAST OF THE EAST RIGHT OF WAY OF NEBRASKA STATE HIGHWAY 31, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 30; THENCE SOUTH 89 DEGREES 34'42" WEST (ASSUMED BEARINGS) FOR 2320.38 FEET ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 30 TO THE EAST RIGHT OF WAY LINE OF NEBRASKA STATE HIGHWAY 31; THENCE NORTH 02 DEGREES 24'24" EAST FOR 579.62 FEET ALONG SAID EAST RIGHT OF WAY LINE; THENCE NORTH 03 DEGREES 12'28" WEST FOR 738.93 FEET ALONG SAID EAST RIGHT OF WAY LINE; THENCE NORTH 00 DEGREES 26'54" WEST FOR 822.85 FEET ALONG SAID EAST RIGHT OF WAY LINE TO SAID CENTERLINE OF A TRIBUTARY TO THE NORTH BRANCH OF THE PAPILLION CREEK; THENCE ALONG SAID CENTERLINE FOR THE FOLLOWING 35 COURSES; 1) THENCE SOUTH 85 DEGREES 42'16" EAST FOR 26.55 FEET; 2) THENCE SOUTH 55 DEGREES 02'47" EAST FOR 73.08 FEET; 3) THENCE SOUTH 42 DEGREES 52'36" EAST FOR 126.54 FEET; 4) THENCE SOUTH 26 DEGREES 32'32" EAST FOR 67.70 FEET; 5) THENCE SOUTH 44 DEGREES 34'13" EAST FOR 58.45 FEET; 6) THENCE SOUTH 21 DEGREES 37'32" EAST FOR 69.65 FEET; 7) THENCE SOUTH 48 DEGREES 16'28" EAST FOR 66.11 FEET; 8) THENCE SOUTH 21 DEGREES 20'49" EAST FOR 53.60 FEET; 9) THENCE SOUTH 42 DEGREES 16'01" EAST FOR 93.59 FEET; 10) THENCE SOUTH 09 DEGREES 38'14" EAST FOR 86.67 FEET; 11) THENCE SOUTH 56 DEGREES 47'11" EAST FOR 71.04 FEET; 12) THENCE SOUTH 78 DEGREES 38'48" EAST FOR 31.08 FEET; 13) THENCE SOUTH 59 DEGREES 12'02" EAST FOR 59.23 FEET; 14) THENCE SOUTH 49 DEGREES 41'20" EAST FOR 100.69 FEET; 15) THENCE SOUTH 36 DEGREES 19'38" EAST FOR 45.39 FEET; 16) THENCE SOUTH 14 DEGREES 35'11" EAST FOR 111.38 FEET; 17) THENCE SOUTH 50 DEGREES 39'15" EAST FOR 166.80 FEET; 18) THENCE SOUTH 29 DEGREES 01'18" EAST FOR 206.17 FEET; 19) THENCE SOUTH 44 DEGREES 51'46" EAST FOR 262.84 FEET; 20) THENCE SOUTH 50 DEGREES 17'57" EAST FOR 92.41 FEET; 21) THENCE SOUTH 61 DEGREES 48'38" EAST FOR 380.51 FEET; 22) THENCE SOUTH 79 DEGREES 44'50" EAST FOR 38.49 FEET; 23) THENCE SOUTH 37 DEGREES 30'41" EAST FOR 53.23 FEET; 24) THENCE SOUTH 46 DEGREES 55'28" EAST FOR 127.18 FEET; 25) THENCE SOUTH 71 DEGREES 21'01" EAST FOR 37.12 FEET; 26) THENCE SOUTH 42 DEGREES 06'48" EAST FOR 60.80 FEET; 27) THENCE SOUTH 19 DEGREES 09'48" EAST FOR 82.59 FEET; 28) THENCE SOUTH 89 DEGREES 06'52" EAST FOR 126.16 FEET; 29) THENCE SOUTH 46 DEGREES 38'59" EAST FOR 117.07 FEET; 30) THENCE SOUTH 67 DEGREES 22'33" EAST FOR 100.04 FEET; 31) THENCE SOUTH 83 DEGREES 08'53" EAST FOR 93.46

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**DEED OF TRUST  
(Continued)**

Loan No: 21397-04

Page 2

FEET; 32) THENCE NORTH 82 DEGREES 12'18" EAST FOR 42.32 FEET; 33) THENCE NORTH 37 DEGREES 19'12" EAST FOR 37.94 FEET; 34) THENCE SOUTH 79 DEGREES 20'26" EAST FOR 90.88 FEET; 35) THENCE NORTH 79 DEGREES 09'50" EAST FOR 24.65 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 30; THENCE SOUTH 00 DEGREES 33'15" EAST FOR 179.96 FEET TO THE POINT OF BEGINNING, SUBJECT TO COUNTY ROAD A/K/A 7707 NORTH 204TH STREET, ELKHORN, NE 68022

**The Real Property or Its address is commonly known as SEE PARCELS ABOVE, NE.**

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**TRUSTOR'S REPRESENTATIONS AND WARRANTIES.** Trustor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Trustor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Trustor and do not result in a violation of any law, regulation, court decree or order applicable to Trustor; (d) Trustor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Trustor about Borrower (including without limitation the creditworthiness of Borrower).

**TRUSTOR'S WAIVERS.** Trustor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Trustor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Trustor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Borrower and Trustor agree that Borrower's and Trustor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Trustor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Trustor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Trustor agrees neither to abandon or leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Nebraska law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for

**DEED OF TRUST  
(Continued)**

be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any person may change his or her address for notices under this Deed of Trust by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors. It will be Trustor's responsibility to tell the others of the notice from Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** What is written in this Deed of Trust and in the Related Documents is Trustor's entire agreement with Lender concerning the matters covered by this Deed of Trust. To be effective, any change or amendment to this Deed of Trust must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by and interpreted in accordance with federal law and the laws of the State of Nebraska. This Deed of Trust has been accepted by Lender in the State of Nebraska.

**Choice of Venue.** If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of DOUGLAS County, State of Nebraska.

**Joint and Several Liability.** All obligations of Borrower and Trustor under this Deed of Trust shall be joint and several, and all references to Trustor shall mean each and every Trustor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Trustor signing below is responsible for all obligations in this Deed of Trust.

**No Waiver by Lender.** Trustor understands Lender will not give up any of Lender's rights under this Deed of Trust unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Trustor will not have to comply with the other provisions of this Deed of Trust. Trustor also understands that if Lender does consent to a request, that does not mean that Trustor will not have to get Lender's consent again if the situation happens again. Trustor further understands that just because Lender consents to one or more of Trustor's requests, that does not mean Lender will be required to consent to any of Trustor's future requests. Trustor waives presentment, demand for payment, protest, and notice of dishonor.

**Severability.** If a court finds that any provision of this Deed of Trust is not valid or should not be enforced, that fact by itself will not mean that the rest of this Deed of Trust will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Deed of Trust even if a provision of this Deed of Trust may be found to be invalid or unenforceable.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nebraska as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust:

**Beneficiary.** The word "Beneficiary" means NEBRASKA STATE BANK OF OMAHA, and its successors and assigns.

**Borrower.** The word "Borrower" means JUDITH J. KNUDSEN and includes all co-signers and co-makers signing the Note.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

**Lender.** The word "Lender" means NEBRASKA STATE BANK OF OMAHA, its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

**Note.** The word "Note" means the promissory note dated July 12, 2003, in the original principal amount of \$878,365.45 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental