

FILED SARPY CO. NE.

INSTRUMENT NUMBER

2006-09151

2006 MAR 17 P 2:35 PM

Slowly J. Dowling
REGISTER OF DEEDS

COUNTER _____
VERIFY *afm* _____
PROOF _____
FEES \$ 46.50
CHECK# 153331
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

WHEN RECORDED MAIL TO:

Great Western Bank
Harvey Oaks
6015 N.W. Radial Hwy.
P.O. Box 4070
Omaha, NE 68104-0070

FOR RECORDER'S USE ONLY

CONSTRUCTION DEED OF TRUST

**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT
WITHIN THE MEANING OF THE NEBRASKA CONSTRUCTION LIEN ACT**

THIS DEED OF TRUST is dated January 3, 2006, among B.H.I. DEVELOPMENT, INC., A NEBRASKA CORPORATION whose address is 11205 S 150TH STREET, OMAHA, NE 68138. ("Trustor"); Great Western Bank, whose address is Harvey Oaks, 6015 N.W. Radial Hwy., P.O. Box 4070, Omaha, NE 68104-0070 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and GREAT WESTERN BANK, whose address is PO BOX 4070, OMAHA, NE 68104-0070 (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 SARPY County, State of Nebraska:

SEE ATTACHED EXHIBIT

The Real Property or its address is commonly known as **HIGHWAY 370 AND 114TH STREET, PAPILLION, NE.**

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Trustor to Lender, or any one or more of them, as well as all claims by Lender against Trustor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Trustor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

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, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF TRUSTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND LENDER OF EVEN DATE HERewith. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

CONSTRUCTION MORTGAGE. This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Nebraska.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that 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 tenantable 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,

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**DEED OF TRUST
(Continued)**

Loan No: 5176730

Page 6

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 federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nebraska without regard to its conflicts of law provisions. 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.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

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.

Waive Jury. All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

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 capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Great Western Bank, and its successors and assigns.

Borrower. The word "Borrower" means B.H.I. DEVELOPMENT, INC. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

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.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

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.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor 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. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means Great Western Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated January 3, 2006, in the original principal amount of \$795,050.00 from Trustor 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 agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived

DEED OF TRUST
(Continued)

Loan No: 5176730

Page 7

from the Property.

Trustee. The word "Trustee" means GREAT WESTERN BANK, whose address is PO BOX 4070, OMAHA, NE 68104-0070 and any substitute or successor trustees.

Trustor. The word "Trustor" means B.H.I. DEVELOPMENT, INC.:

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.

TRUSTOR:

B.H.I. DEVELOPMENT, INC.

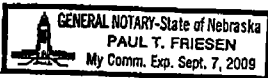
By: [Signature]
GERALD L. TORCZON, President of B.H.I. DEVELOPMENT, INC.

CORPORATE ACKNOWLEDGMENT

STATE OF Nebraska)
) SS
COUNTY OF Douglas)

On this 03 day of January, 2006, before me, the undersigned Notary Public, personally appeared GERALD L. TORCZON, President of B.H.I. DEVELOPMENT, INC., and known to me to be an authorized agent of the corporation that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the corporation.

By: [Signature]
Notary Public in and for the State of _____
Residing at _____
My commission expires _____



REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____ Beneficiary: _____
By: _____
Its: _____

2006-09/51 G

EXHIBIT "A"

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN PART OF TAX LOT 1, A TAX LOT LOCATED IN THE SE 1/4 OF SECTION 29, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SE1/4 OF SECTION 29, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TAX LOT 1; THENCE S02°25'52"E (ASSUMED BEARING) ALONG THE EAST LINE OF SAID SE1/4 OF SECTION 29, SAID LINE ALSO BEING THE EAST LINE OF SAID TAX LOT 1, A DISTANCE OF 1791.73 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S02°25'52"E ALONG SAID EAST LINE OF THE SE1/4 OF SECTION 29, SAID LINE ALSO BEING SAID EAST LINE OF TAX LOT 1, A DISTANCE OF 603.51 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 370; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 370 ON THE FOLLOWING DESCRIBED COURSES; THENCE N89°26'21"W, A DISTANCE OF 383.66 FEET; THENCE S78°36'45"W, A DISTANCE OF 454.51 FEET; THENCE N82°26'26"W, A DISTANCE OF 483.51 FEET; THENCE N02°45'33"W, A DISTANCE OF 84.29 FEET; THENCE S87°14'27"W, A DISTANCE OF 561.48 FEET; THENCE S02°45'33"E, A DISTANCE OF 163.28 FEET; THENCE N87°29'06"W, A DISTANCE OF 606.01 FEET; THENCE N21°45'24"W, A DISTANCE OF 490.60 FEET; THENCE S87°29'27"W, A DISTANCE OF 33.00 FEET TO A POINT ON THE WEST LINE OF SAID SE1/4 OF SECTION 29, SAID POINT ALSO BEING ON THE WEST LINE OF SAID TAX LOT 1; THENCE N02°30'33"W ALONG SAID WEST LINE OF THE SE1/4 OF SECTION 29, SAID LINE ALSO BEING SAID WEST LINE OF TAX LOT 1, A DISTANCE OF 255.22 FEET; THENCE N87°29'27"E, A DISTANCE OF 119.44 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 239.76 FEET, A DISTANCE OF 34.50 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S88°23'11"E, A DISTANCE OF 34.47 FEET; THENCE N87°29'27"E, A DISTANCE OF 524.28 FEET; THENCE N02°55'11"W, A DISTANCE OF 192.34 FEET; THENCE N33°05'58"E, A DISTANCE OF 90.90 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 125.00 FEET, A DISTANCE OF 78.21 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S74°49'33"E, A DISTANCE OF 76.94 FEET; THENCE N87°14'59"E, A DISTANCE OF 366.59 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 87.50 FEET, A DISTANCE OF 12.26 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S88°44'16"E, A DISTANCE OF 12.25 FEET; THENCE S84°43'31"E, A DISTANCE OF 60.15 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 27.50 FEET, A DISTANCE OF 18.07 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S65°53'57"E, A DISTANCE OF 17.75 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 60.50 FEET, A DISTANCE OF 96.52 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N87°13'28"E, A DISTANCE OF 86.60 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 27.50 FEET, A DISTANCE OF 18.15 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N60°25'48"E, A DISTANCE OF 27.50 FEET; THENCE N79°20'15"E, A DISTANCE OF 60.73 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 87.50 FEET, A DISTANCE OF 12.08 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N83°17'37"E, A DISTANCE OF 12.07 FEET; THENCE N87°14'59"E, A DISTANCE OF 456.08 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 150.00 FEET, A DISTANCE OF 52.89 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N77°08'54"E, A DISTANCE OF 52.82 FEET; THENCE S18°38'08"W, A DISTANCE OF 345.07 FEET; THENCE S71°21'52"E, A DISTANCE OF 147.06 FEET; THENCE N87°34'08"E, A DISTANCE OF 716.21 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 2,022,361 SQUARE FEET, OR 46.427 ACRES, MORE OR LESS.

SAID TRACT OF LAND CONTAINS AN AREA OF 8,422 SQUARE FEET, OR 0.193 ACRES, MORE OR LESS, OF 33.00 FOOT WIDE 114TH STREET RIGHT-OF-WAY.

SEE SHEET 1 OF 2 FOR DRAWING



E&A CONSULTING GROUP, INC.
ENGINEERS • PLANNERS • SURVEYORS

12001 G STREET OMAHA, NE 68137 PHONE: (402) 895-4700

Drawn by: DAS Chkd by: 2006 12-29-05 Chkd by: _____

Job No.: 2004225.01 Date: 12/27/2005 SHEET 2 OF 2

PART OF TAX LOT 1
SE1/4 OF SECTION 29, T14N, R12E
OF THE 6TH P.M.,
SARPY COUNTY, NEBRASKA