



MTG 2003203525

RICHARD W. TANECH  
REGISTER OF DEEDS



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10-20-03

**DEED OF TRUST**

THIS DEED OF TRUST dated March 1, 2002, by and among STATE STREET INVESTMENTS, LLC, a Nebraska limited liability company ("Trustor"), whose mailing address 13215 Birch Street, Suite 103, Omaha, Nebraska 68164; JOHN Q. BACHMAN, attorney-at-law ("Trustee"), whose mailing address is 10050 Regency Circle, Suite 200, Omaha, Nebraska 68114; and SHARON S. BRUNING ("Beneficiary"), whose mailing address is 9408 Woodney Circle, Omaha, Nebraska 68122.

FOR VALUABLE CONSIDERATION, Trustor irrevocably transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the real estate in Douglas County, Nebraska, described as follows (the "Property"):

See Exhibit "A" attached hereto and incorporated herein by this reference.

TOGETHER WITH, all rents, easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, improvements and buildings of any kind situated thereon and all personal property that may be or hereafter become an integral part of such buildings and improvements, and insurance and condemnation proceeds payable to Trustor with respect to the Property.

The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "Trust Estate."

**THIS DEED OF TRUST SECURES:**

a. Payment of indebtedness in the total principal amount of \$1,000,000, with interest thereon, as evidenced by and according to that certain promissory note of even date (the "Note") having a maturity date of September 30, 2005, executed by Trustor as Maker and payable to the order of Beneficiary as Holder, and which Note and any and all modifications, extensions and renewals thereof by this reference is incorporated in this Deed of Trust.

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b. Payment of all sums advanced by Beneficiary to protect the Trust Estate without interest.

c. Any prepayments of principal and interest shall entitle Trustor to advance releases of Property accordingly.

This Deed of Trust, the Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to collectively as the "Security Instruments."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST:

1. PAYMENT OF INDEBTEDNESS. Trustor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, and all charges, fees and all other sums required by the Security Instruments.

2. TAXES. Trustor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof, before delinquency, without notice of demand, and shall provide Beneficiary with evidence of the payment of same. Trustor shall pay all taxes and assessments which may be levied upon Beneficiary's interest herein or upon this Deed of Trust or the debt secured hereby, without regard to any law that may be enacted imposing payment of the whole or any part thereof upon the Beneficiary.

3. INSURANCE. Trustor shall maintain general liability insurance on the Property for an amount equal to at least One Million and No/100 Dollars (\$1,000,000.00). Such insurance policy shall contain a standard mortgage clause in favor of the Beneficiary and Trustee and shall not be cancelable, terminable or modifiable without ten (10) days prior written notice to Beneficiary.

4. REPAIRS. Trustor shall maintain the Trust Estate in good condition and repair and shall make such replacements as are necessary. The Trustor shall be allowed to remove any improvements to the Trust Property consistent with its development plans at any time as an event of default does not exist.

5. ACTIONS AFFECTING TRUST ESTATE. If Trustor fails to perform the covenants and agreements contained in the Security Instruments, or if any action or proceeding is commenced which affects Beneficiary's interest in the Trust Estate, then Beneficiary, at Beneficiary's option, upon notice to Trustor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest.

Any amounts disbursed by Beneficiary pursuant to this Paragraph 5, with interest thereon, at the Note rate, shall become additional indebtedness of Trustor secured by this Deed

of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof. Nothing contained in this Paragraph 5 shall require Beneficiary to incur any such expense or take any such action.

6. EMINENT DOMAIN. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner including deed in lieu of Condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief thereof which shall be applied to accrued interest and other sums due and then to the unpaid principal balance of the Note in the inverse order of maturity. Beneficiary shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings.

7. APPOINTMENT OF SUCCESSOR TRUSTEE. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed by Trustor and recorded in the County in which the Trust Estate is located and by otherwise complying with the provisions of the applicable law of the State of Nebraska substitute a successor or successors to the Trustee named herein or acting hereunder.

8. INSPECTIONS. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Security Instruments.

9. EVENTS OF DEFAULT. Any of the following events shall be deemed an event of default hereunder: (a) Trustor shall have failed to make payment of any installment of interest, principal, or principal and interest or any other sum secured hereby when due; or (b) there has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Security Instruments.

10. ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES. Should an event of default occur, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect

the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney's fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Security Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants of the Security Instruments;

(c) Exercise the power of sale in accordance with the Nebraska Trust Deeds Act.

11. REMEDIES NOT EXCLUSIVE. No remedy conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Security Instruments to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law.

12. REQUEST FOR NOTICE. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

13. GOVERNING LAW; PARTIAL INVALIDITY; AMENDMENTS. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of any of the loan instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Security Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Security Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

14. RECONVEYANCE BY TRUSTEE. When the obligations secured by this Deed of Trust have been satisfied or partially satisfied, the Trustee shall, upon written request by the Beneficiary, reconvey the Trust Estate to the person or persons legally entitled thereto, without warranty, and without cost to Trustor. Trustor is in the process of having the Property subdivided into platted lots. Provided that no event of default has occurred and is continuing, Beneficiary agrees to cause Trustee to execute and deliver partial deeds of reconveyance with respect to each platted lot mortgaged hereunder upon payment to the holder under the Note of \$10,500.00 per lot, in payment of the Note.

15. ACTIONS FOLLOWING PLAT RECORDING. Trustor, Trustee and Beneficiary acknowledge that Trustor is acquiring the Property for purposes of development as part of a residential and commercial subdivision to be platted as the Pine Creek subdivision. Trustor has provided Trustee and Beneficiary with a copy of a preliminary plat of Pine Creek that includes the Property. Trustor has represented to Trustee and Beneficiary that American Interstate Bank of Elkhorn, Nebraska ("AIB"), is providing financing for acquisition and development costs for the Pine Creek subdivision. Concurrently with the execution of this Deed of Trust, AIB is taking a deed of trust on that part of the Pine Creek subdivision excluding the Property (approximately 200 acres). As the Pine Creek subdivision has not been finally platted, both this Deed of Trust and the AIB deed of trust reflect a metes and bounds legal description. Trustor and Beneficiary have agreed, and Trustor and AIB have agreed that following the platting of the Pine Creek subdivision, their respective Deeds of Trust will be amended by releasing the real estate described by metes and bounds, and replacing such released property with platted lots in the Pine Creek subdivision. The platted lots to be included as security under this Deed of Trust are all of those single-family lots as shown on the preliminary plat generally south and east of Sheffield and 158<sup>th</sup> Streets, and identified as Lot Nos. 204 through 300, inclusive (97 single-family lots). Trustor, Trustee and Beneficiary agree to execute an amendment to the Deed of Trust and such other documents as may be necessary or appropriate to accomplish the foregoing, provided, however, that AIB concurrently release its lien on the platted lots to be conveyed to Trustee and Beneficiary.

16. NOTICES. Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is (a) delivered by personal service, or (b) mailed by certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust, with delivery deemed to have occurred on the date of mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

17. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN TRUSTOR. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person) without Beneficiary's prior written consent, Beneficiary may, at its option, require immediate payment

in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal law as of the date of this Deed of Trust.

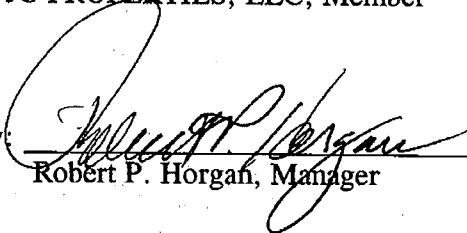
If Beneficiary exercises this option, Beneficiary shall give Trustor notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Trustor must pay all sums secured by this Deed of Trust. If Trustor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any remedies permitted by this Deed of Trust without further notice or demand on Trustor.

18. SUCCESSORS AND ASSIGNS. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not specifically named as Beneficiary herein.

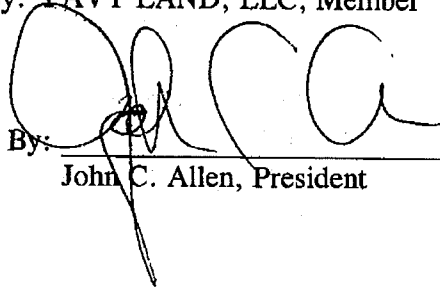
Executed on the date first above written.

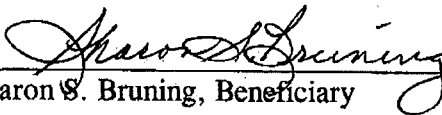
STATE STREET INVESTMENTS, LLC, a  
Nebraska limited liability company, Trustor

By: JC PROPERTIES, LLC, Member

By:   
Robert P. Horgan, Manager

By: PAVY LAND, LLC, Member

By:   
John C. Allen, President

  
Sharon S. Bruning, Beneficiary

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

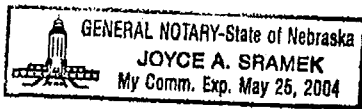
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of FEBRUARY, 2002, by Robert P. Horgan, Manager of JC PROPERTIES, LLC, a Nebraska limited liability company, Member of STATE STREET INVESTMENTS, LLC, a Nebraska limited liability company, on behalf of the company.



Donna M. Nissen  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

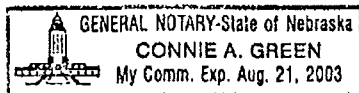
The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of February, 2002, by John C. Allen, President of PAVY LAND, LLC, a Nebraska limited liability company, Member of STATE STREET INVESTMENTS, LLC, a Nebraska limited liability company, on behalf of the company.



Joyce A. Sramek  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 1 day of March, 2002, by Sharon S. Bruning.



Connie A. Green  
Notary Public

**EXHIBIT "A"****Legal Description**

THE SOUTHEAST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION  
27, TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE 6<sup>TH</sup>  
P.M., IN DOUGLAS COUNTY, NEBRASKA, EXCEPT  
THOSE PARTS FOR PUBLIC ROADS AND/OR HIGHWAYS.