



REL 2004051003



APR 22 2004 13:15 P 2

Received - RICHARD TAKECHI  
Register of Deeds, Douglas County, NE  
4/22/2004 13:15:22.99



2004051003



first national bank  
of omaha

DEED OF RECONVEYANCE

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS, all/part of the indebtedness secured by that certain Deed of Trust executed by HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, as Trustor, to FIRST NATIONAL BANK OF OMAHA, as Trustee and Beneficiary, dated January 5, 2004 and recorded in the office of the Register of Deeds of Douglas County, Nebraska in Book \_\_\_\_\_ at Page \_\_\_\_\_, or Instrument Number 2004001983, has been paid.

NOW THEREFORE, in consideration of payment, and in accordance with the request of the Beneficiary named therein, the undersigned Trustee does by these presents, grant, remise, release and reconvey to the person or persons entitled thereto all the interest and estate granted to said Trustee by said Deed of Trust in the following described premises, but only as to such premises:

See Exhibit "A" attached hereto.

*Rel*  
2/ FEE 10.50 FB 01.60  
1/ BKP 3-15-11 C/O \_\_\_\_\_ COMP \_\_\_\_\_  
5/ DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

Dated: March 16, 2004

(SEAL)

FIRST NATIONAL BANK OF OMAHA

By Robert J. Horak  
its Robert J. Horak Vice President

ATTESTED:

By Michael J. Kuester  
its Michael J. Kuester Vice President

NOTARY ACKNOWLEDGMENT

State of NEBRASKA )  
County of Douglas ) SS

On this 16th day of March, 2004, before me, a Notary Public duly and for said state, personally appeared Robert J. Horak known to me to be Vice President of First National Bank of Omaha, a National Banking Association, and acknowledged the execution of the foregoing Deed of Reconveyance to be his voluntary act and deed and the voluntary act and deed of First National Bank of Omaha, as Trustee.

Witness my hand and Notarial Seal the date last above written.

Delores M. Micheel  
Notary Public  
GENERAL NOTARY-State of Nebraska  
DELORES M. MICHEEL  
My Comm. Exp. Nov. 30, 2006

State of NEBRASKA )  
County of Douglas )

On this 16th day of March, 2004, before me, a Notary Public duly and for said state, personally appeared Michael J. Kuester known to me to be Vice President of First National Bank of Omaha, a National Banking Association, and acknowledged the execution of the foregoing Deed of Reconveyance to be his voluntary act and deed and the voluntary act and deed of First National Bank of Omaha, as Trustee.

Witness my hand and Notarial Seal the date last above written.

Delores M. Micheel  
Notary Public  
GENERAL NOTARY-State of Nebraska  
DELORES M. MICHEEL  
My Comm. Exp. Nov. 30, 2006

CERTIFICATE

The undersigned hereby certifies that the following is a true and correct copy of a portion of Article IV of the By-Laws of the First National Bank of Omaha, a National Banking Association: "All assignments of mortgages and trust deeds, and all releases of mortgages and deeds of reconveyance shall be executed under the Seal of the Association by any Member of the Executive Committee, any Executive Vice President, Senior Vice President, or Vice President, and shall be attested to by any member of the Executive Committee, any Executive Vice President, Senior Vice President, or Vice President, or any person so designated by resolution."

The undersigned further certifies that the persons who executed the above and foregoing Deed of Reconveyance are officers of First National Bank of Omaha as respectively designated in said Release.

Pamela M. White  
Bank Representative

#35 CO4-667

## EXHIBIT "A"

Parcel One:

The West One Fourth (W1/4) of the South One Half (S1/2) of the Northwest One Fourth (NW1/4) of Section 3, Township 15 North, Range 11, East of the 6th P.M., Douglas County, Nebraska.

Parcel Two:

Tract I: That part of the N1/2 of the NW1/4 of Section 3, T15N, R11E of the 6th P.M., Douglas County, Nebraska, lying East of the following described line: Commencing at the NW corner of said N1/2; thence N 89°18'20" E (assumed bearing) on the North line of said N1/2, 1077.62 feet to the point of beginning; thence S 4°07'31" E, 175.85 feet; thence S 41°06'54" E, 89.01 feet; thence S 10°07'27" E, 91.93 feet; thence S 38°06'58" E, 88.45 feet; thence S 8°52'21" W, 303.31 feet; thence S 75°22'38" W, 121.95 feet; thence S 32°22'16" W, 96.23 feet; thence S 8°22'21" W, 282.74 feet; thence S 10°07'27" E, 121.27 feet; thence S 13°07'24" E, 103.75 feet to a point on the South line of said N1/2 said point also being 1006.94 feet East of SW corner of said N1/2; thence N 89°22'34" E, 1635.00 feet to the SE corner of said N1/2; thence Northerly on the East line of said N1/2, 1314.83 feet to the NE corner of said N1/2; thence S 89°18'20" W on the North line of said N1/2 1560.75 feet to the point of beginning.

Tract II: The W1/2 of the NE1/4 of Section 3, T15N, R11E of the 6th P.M., Douglas County, Nebraska, except that part described as follows: Beginning at the NE corner of the West 1/2 of the NE1/4 of said Section 3; thence Southerly on the East line of the West 1/2 of the NE1/4 of said Section 3, a distance of 208.71 feet; thence Westerly on a line 208.71 feet South from and parallel to the North line of the West 1/2 of the NE1/4 of said Section 3, a distance of 208.71 feet; thence Northerly on a line 208.71 feet West from and parallel to the East line of the West 1/2 of the NE1/4 of said Section 3, a distance of 208.71 feet to a point on the North line of the West 1/2 of the NE1/4 of said Section 3; thence Easterly on the North line of the West 1/2 of the NE1/4 of said Section 3 a distance of 208.71 feet to the Point of Beginning. And except that part described as follows: Beginning at the N1/4 corner of said Section 3-15-11; thence N 89°27'02" E (Assumed Bearing) on the North line of the NE1/4 of said Section 3, 533.93 feet; thence South on a line 533.93 feet East of and parallel to the West line of the NE1/4 of said Section 3, 407.94 feet; thence S 89°27'02" W, on a line 407.94 feet South of and parallel to the North line of the NE1/4 of said Section 3, 533.93 feet to a point on the West line of the NE1/4 of said Section 3; thence North on the West line of the NE1/4 of said Section 3, 407.94 feet to the point of beginning

Parcel Three:

The East Three-Fourths (3/4) of the South One-Half (S1/2) of the Northwest One-Fourth (NW1/4) of Section 3, Township 15 North, Range 11, East of the 6th P.M., Douglas County, Nebraska



MTG 2004001983



JAN 06 2004 09:08 P 23

**WHEN RECORDED, PLEASE RETURN TO:**

Mortgage Loan Department  
First National Bank of Omaha  
Third Floor, First National Plaza  
11404 West Dodge Road  
Omaha, Nebraska 68154

Received - RICHARD TAKECHI  
Register of Deeds, Douglas County, NE  
1/6/2004 9:08:46 AM



2004001983

**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 (this "Deed of Trust") is executed this 5<sup>th</sup> day of January, 2004, by and among HORGAN DEVELOPMENT COMPANY, a Nebraska corporation ("Trustor"), whose address is 13215 Birch Street, Suite 103, Omaha, Nebraska 68164; FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska ("Beneficiary"), whose address is 1620 Dodge Street, Omaha, Nebraska 68102; and FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska ("Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged:

I. Trustor hereby irrevocably warrants, grants, bargains, sells, 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 hereinafter set forth, all of the estate, property and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Property" more particularly described on Exhibit "A" attached hereto, together with all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all estate, right, title and interest of Trustor in and to all lease or subleases covering the Property, or any portion thereof, now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property; any and all buildings and improvements now or hereafter erected on the Property, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (the "Improvements");

Box 35  
CBS-1397

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1396520

II. Trustor further grants Beneficiary a security interest in the following (the "Personal Property"):

A. All right, title and interest of Trustor in and to all tangible personal property now owned or hereafter acquired by Trustor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to: all building materials stored on the Property, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, all kitchen equipment, and all other equipment of every kind), other than such property owned by tenants of Trustor;

B. All of Trustor's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Property, whether now existing or entered into or obtained after the date hereof;

C. All the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and Trustor hereby authorizes, directs and empowers Beneficiary, at its option, on Trustor's behalf, or on behalf of the successors or assigns of Trustor, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

The foregoing items of Personal Property, together with the Property and Improvements are hereinafter called the "Mortgaged Property."

PROVIDED, HOWEVER, that these presents are upon the condition that, if the obligations secured hereby shall be paid when due, and if the Trustor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed by and observed by or on the part of the Trustor, then the Trustee, its successors and assigns, shall reconvey and release the Mortgaged Property.

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

(i) Payment of indebtedness evidenced by that certain Promissory Note dated of even date herewith (the "Promissory Note"), executed by Trustor in favor of Beneficiary in the principal amount of \$5,800,000.00, bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof, presently scheduled to mature January 4, 2005;

(ii) Payment of all other indebtedness and performance of all obligations and covenants of Trustor under each of the "Loan Documents," as hereinafter defined; and

(iii) Payment of all of the principal of and interest on any future advances under the Loan Documents and all sums advanced by Beneficiary to protect the Mortgaged Property, with interest thereon at the Default Rate provided by the Promissory Note from the date of advance by Beneficiary to the date of payment by Trustor.

The indebtedness and the obligations secured by this Deed of Trust which are described in (i) through (iii) above may be referred to herein as the "Secured Obligations."

## EXHIBIT "A"

### Legal Description

Parcel One:

The West One Fourth (W1/4) of the South One Half (S1/2) of the Northwest One Fourth (NW1/4) of Section 3, Township 15 North, Range 11, East of the 6th P.M., Douglas County, Nebraska.

Parcel Two:

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The East Three-Fourths (3/4) of the South One-Half (S1/2) of the Northwest One-Fourth (NW1/4) of Section 3, Township 15 North, Range 11, East of the 6th P.M., Douglas County, Nebraska

**EXHIBIT "B"****Permitted Encumbrances**

1. Easement to Nebraska Power Company contained in Contract dated December 10, 1927, filed May 15, 1928 in Book 83, Page 304, Miscellaneous Records, Douglas County, Nebraska.
2. Easement to Northern Natural Gas Company dated January 10, 1962, filed March 21, 1963, in Book 378 at Page 25, Miscellaneous Records, Douglas County, Nebraska; Modification and Amendment of Easement Grant dated March 27, 1980, filed May 13, 1980, in Book 633, Page 141, Miscellaneous Records, Douglas County, Nebraska; Modification and Amendment of Easement Grant dated March 27, 1980, filed August 26, 1981 in Book 658, Page 231, Miscellaneous Records, Douglas County, Nebraska.
3. Easement to Northern Natural Gas Company dated January 17, 1962, filed March 21, 1962, in Book 378, Page 27, Miscellaneous Records, Douglas County, Nebraska.
4. Right of Way Easement to Omaha Public Power District dated November 6, 1981, filed November 20, 1981 in Book 663, Page 166, Miscellaneous Records, Douglas County, Nebraska.
5. Easement to County of Douglas, State of Nebraska, dated February 15, 1996, filed April 9, 1996, in Book 1173, Page 575, Miscellaneous Records, Douglas County, Nebraska.
6. Permanent Sewer Easement to Sanitary and Improvement District No. 375 of Douglas County, Nebraska and the City of Omaha, Nebraska dated June 16, 1995, filed June 29, 1995 in Book 1150, Page 291, Miscellaneous Records, Douglas County, Nebraska.
7. Permanent Sewer Easement to Sanitary and Improvement District No. 427 of Douglas County, Nebraska, and the City of Omaha, Nebraska dated June 3, 1999, filed June 7, 1999 in Book 1295 at Page 648, Miscellaneous Records, Douglas County, Nebraska.
8. Permanent Sewer Easement to Sanitary and Improvement District No. 427 of Douglas County, Nebraska and the City of Omaha, Nebraska, dated June 3, 1999, filed June 7, 1999 in Book 1295 at Page 658, Miscellaneous Records, Douglas County, Nebraska.
9. Permanent Sewer Easement to Sanitary and Improvement District No. 427 of Douglas County, Nebraska and the City of Omaha, Nebraska, dated June 3, 1999, filed June 7, 1999 in Book 1295 at Page 666, Miscellaneous Records, Douglas County, Nebraska.
10. Easements as set forth in Report of Appraisers filed September 29, 2000 in Case No. 13855 in the County Court of Douglas County, Nebraska.