

**RECORDATION REQUESTED BY:**

PACKERS NEBRASKA BANK & TRUST CO.  
4710 SOUTH 23RD STREET  
OMAHA, NE 68107

**WHEN RECORDED MAIL TO:**

PACKERS NEBRASKA BANK & TRUST CO.  
4710 SOUTH 23RD STREET  
OMAHA, NE 68107

**SEND TAX NOTICES TO:**

PACKERS NEBRASKA BANK & TRUST CO.  
4710 SOUTH 23RD STREET  
OMAHA, NE 68107

20063 #3-15-11  
FEE 309 R FBOI-60000  
DEL. C/O COMP VP  
LEGAL PG 371 SCANNED FV

GEORGE J. GOSWAMICZ  
REGISTERED PROFESSIONAL  
DOUGLAS COUNTY, NE

OCT 3 10 06 AM '94

RECEIVED

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**DEED OF TRUST**

THIS DEED OF TRUST IS DATED SEPTEMBER 29, 1994, among HOGAN HOMES, INC., A NEBRASKA CORPORATION, whose address is 6211 SOUTH 118 PLAZA, OMAHA, NE 68137 (referred to below as "Trustor"); PACKERS NEBRASKA BANK & TRUST CO., whose address is 4710 SOUTH 23RD STREET, OMAHA, NE 68107 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and PACKERS NEBRASKA BANK & TRUST CO., whose address is 4710 S. 23RD STREET OMAHA, NEBRASKA 68107 (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, located in DOUGLAS County, State of Nebraska (the "Real Property"):

THAT PART OF THE SOUTH 792 FEET OF THE WEST 660 FEET OF THE EAST 710 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE WEST (ASSUMED BEARING) 710.00 FEET ON THE SOUTH LINE OF SAID SOUTHEAST 1/4; THENCE NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 165.24 FEET ON THE WEST LINE OF THE EAST 710 FEET OF SAID SOUTHEAST 1/4 TO THE POINT OF BEGINNING, SAID POINT BEING ON THE NORTH LINE OF WEST MAPLE ROAD; THENCE CONTINUING NORTH 00 DEGREES 21 MINUTES 04 SECONDS EAST, 626.76 FEET ON THE WEST LINE OF THE EAST 710 FEET OF SAID SOUTHEAST 1/4; THENCE EAST 660.00 FEET ON THE NORTH LINE OF THE SOUTH 792 FEET OF SAID SOUTHEAST 1/4; THENCE SOUTH 00 DEGREES 21 MINUTES 04 SECONDS WEST, 482.11 FEET ON THE EAST LINE OF THE WEST 660 FEET OF THE EAST 710 FEET OF SAID SOUTHEAST 1/4 TO THE NORTH LINE OF WEST MAPLE ROAD; THENCE SOUTH 24 DEGREES 28 MINUTES 29 SECONDS WEST, 80.74 FEET ON THE NORTH LINE OF WEST MAPLE ROAD; THENCE SOUTH 00 DEGREES 06 MINUTES 51 SECONDS WEST 80.00 FEET ON THE NORTH LINE OF WEST MAPLE ROAD; THENCE NORTH 89 DEGREES 11 MINUTES 35 SECONDS WEST 627.34 FEET ON THE NORTH LINE OF WEST MAPLE ROAD TO THE POINT OF BEGINNING.

The Real Property or its address is commonly known as 15602 WEST MAPLE ROAD, OMAHA, NE 68116. The Real Property tax identification number is 1757-0005-01.

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 Lender a Uniform Commercial Code security interest in the Rents and the Personal Property defined below.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Beneficiary.** The word "Beneficiary" means PACKERS NEBRASKA BANK & TRUST CO., its successors and assigns. PACKERS NEBRASKA BANK & TRUST CO. also is referred to as "Lender" in this Deed of Trust.

**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.

**Guarantor.** The word "Guarantor" means and includes without limitation any and all guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, 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 and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Trustor or expenses incurred by Trustee or Lender to enforce obligations of Trustor under this Deed of Trust,

together with interest on such amounts as provided in this Deed of Trust. In addition to the Note, the word "Indebtedness" includes 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, absolute or contingent, liquidated or unliquidated and whether Trustor may be liable individually or jointly with others, whether obligated as guarantor or otherwise, and whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations, and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**Lender.** The word "Lender" means PACKERS NEBRASKA BANK & TRUST CO., its successors and assigns.

**Note.** The word "Note" means the Note dated September 29, 1994, in the principal amount of \$540,000.00 from Trustor to Lender, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note.

**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 property, interests and rights described above in the "Conveyance and Grant" section.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, 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 from the Property.

**Trustee.** The word "Trustee" means PACKERS NEBRASKA BANK & TRUST CO. and any substitute or successor trustees.

**Trustor.** The word "Trustor" means any and all persons and entities executing this Deed of Trust, including without limitation all Trustors named above.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF TRUSTOR 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 OBLIGATIONS OF TRUSTOR 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. THE NOTE AND THIS DEED OF TRUST ARE 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.

**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 (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property.

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

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in 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, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Trustor represents and warrants to Lender that: (a) 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 waste or substance by any person on, under, or about the Property; (b) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) 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 waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. 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 waste. Trustor hereby (a) 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 (b) 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), soil, gravel or rock products without the prior written consent of Lender.

**Removal of Improvements.** Trustor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. 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 its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the 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, including without limitation, the Americans With Disabilities Act. 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 nor 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 its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the 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 therein; 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 Real Property interest. If any Trustor is a corporation, partnership or limited liability company,