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BILLINGS, MT 59107
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State of Nebraska

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REFERENCE# 20043247000516

ACCOUNT#0650-650-6442714-1998

REAL ESTATE DEED OF TRUST

(With Future Advance Clause)

Construction Security Agreement

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is 12/13/2004 and the parties, their addresses and tax identification numbers, if required, are as follows:

TRUSTOR:

KEVIN T. SMITH AND WINONA L. SMITH, HUSBAND AND WIFE, AS
JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON

If checked, refer to the attached Addendum incorporated herein, for additional Trustors, their signatures and acknowledgements.

TRUSTEE: WELLS FARGO FINANCIAL NATIONAL BANK
c/o Specialize Service
401 West 24th Street
National City, CA 91950

BENEFICIARY: Wells Fargo Bank, N.A.
P. O. BOX 31557
BILLINGS, MT 59107

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Beneficiary, with power of sale, the following described property:

17-15-424-007-000

LOT 7, BLOCK 1, NORTHERN LIGHTS 6TH ADDITION, LINCOLN, LANCASTER COUNTY, NEBRASKA.

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The property is located in LANCASTER at 7956 MEDICINE HAT ROAD
(County)
(Address) , LINCOLN , Nebraska 68505
(City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property.")

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 22,800.00 . This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Beneficiary's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
 - A. Debt incurred under the terms of the promissory note, revolving line of credit agreement, contract, guaranty or other evidence of debt dated 12/13/2004 together with all amendments, extensions, modifications or renewals. The maturity date of the Secured Debt is 12/13/2044 .
 - B. All future advances from Beneficiary to Trustor under evidence of debt, whether obligatory or discretionary. All future advances are as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances which exceed the amount shown in Section 3. Any such commitment must be agreed to in a separate writing.
 - C. All sums advanced and expenses incurred by Beneficiary for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Beneficiary under the terms of this Security Instrument.
5. **PAYMENTS.** Trustor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
6. **WARRANTY OF TITLE.** Trustor warrants that Trustor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey, and sell the Property to Trustee, in trust, with power of sale. Trustor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Trustor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Beneficiary any notices that Trustor receives from the holder.
 - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Beneficiary's prior written consent.
8. **CLAIMS AGAINST TITLE.** Trustor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Beneficiary may require Trustor to provide to Beneficiary copies of all notices that such amounts are due and the receipts evidencing Trustor's payment. Trustor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Trustor agrees to assign to Beneficiary, as requested by Beneficiary, any rights, claims or defenses Trustor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Beneficiary may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Trustor will keep the Property in good condition and make all repairs that are reasonably necessary. Trustor shall not commit or allow any waste, impairment, or deterioration of the Property. Trustor will keep the Property free of noxious weeds and grasses. Trustor agrees that the nature of the occupancy and use will not substantially change without Beneficiary's prior

written consent. Trustor will not permit any change in any license, restrictive covenant or easement without Beneficiary's prior written consent. Trustor will notify Beneficiary of all demands, proceedings, claims, and actions against Trustor, and of any loss or damage to the Property.

Beneficiary or Beneficiary's agents may, at Beneficiary's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Beneficiary shall give Trustor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Beneficiary's benefit and Trustor will in no way rely on Beneficiary's inspection.

11. AUTHORITY TO PERFORM. If Trustor fails to perform any duty or any of the covenants contained in this Security Instrument, Beneficiary may, without notice, perform or cause them to be performed. Trustor appoints Beneficiary as attorney in fact to sign Trustor's name or pay any amount necessary for performance. Beneficiary's right to perform for Trustor shall not create an obligation to perform, and Beneficiary's failure to perform will not preclude Beneficiary from exercising any of Beneficiary's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Beneficiary may take all steps necessary to protect Beneficiary's security interest in the Property, including completion of the construction.

12. ASSIGNMENT OF LEASES AND RENTS. Trustor irrevocably grants, bargains and sells to Trustee, in trust for the benefit of Beneficiary, as additional security all the right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases") and rents, issues and profits (all referred to as "Rents"). Trustor will promptly provide Beneficiary with true and correct copies of all existing and future Leases. Trustor may collect, receive, enjoy and use the Rents so long as Trustor is not in default under the terms of this Security Instrument.

Trustor acknowledges that this assignment is perfected upon the recording of this Deed of Trust and that Beneficiary is entitled to notify any of Trustor's tenants to make payment of Rents due or to become due to Beneficiary. However, Beneficiary agrees that only on default will Beneficiary notify Trustor and Trustor's tenants and make demand that all future Rents be paid directly to Beneficiary. On receiving notice of default, Trustor will endorse and deliver to Beneficiary any payment of Rents in Trustor's possession and will receive any Rents in trust for Beneficiary and will not commingle the Rents with any other funds. Any amounts collected will be applied as provided in this Security Instrument. Trustor warrants that no default exists under the Leases or any applicable landlord/tenant law. Trustor also agrees to maintain and require any tenant to comply with the terms of the Leases and applicable law.

13. LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. Trustor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the property is a unit in a Condominium Project or is part of a Planned Unit Development ("PUD"), Trustor agrees to the following:

A. **Obligations.** Trustor shall perform all of Trustor's obligations under the Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Projects or PUD and any homeowners association or equivalent entity ("Owners Association"); (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Trustor shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. **Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project or PUD which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then Trustor's obligation under Section 19 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owner's Association policy. Trustor shall give Lender prompt notice of any lapse in required hazard insurance coverage. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to Property, whether to the unit or to common elements, any proceeds payable to Trustor are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to Trustor.

C. **Flood Insurance.** Trustor agrees to maintain flood insurance for the life of the Secured Debt which is acceptable, as to form, amount and extent of coverage to Lender.

D. **Public Liability Insurance.** Trustor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

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- E. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Trustor in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 18.
- F. Lender's Prior Consent. Trustor shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project or PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management by the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.
- G. Remedies. If Trustor does not pay condominium or PUD dues and assessments when due, then Lender may pay them. Any amount disbursed by Lender under this section shall become additional debt of Trustor secured by this Security Instrument. Unless Trustor and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Secured Debt rate and shall be payable, with interest, upon notice from Lender to Trustor requesting payment.
- 14. DEFAULT.** Trustor will be in default if any party obligated on the Secured Debt fails to make payment when due. Trustor will be in default if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt. A good faith belief by Beneficiary that Beneficiary at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
- 15. REMEDIES ON DEFAULT.** In some instances, federal and state law will require Beneficiary to provide Trustor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Beneficiary may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Trustor is in default.
- At the option of Beneficiary, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Beneficiary shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.
- If there is a default, Trustee shall, in addition to any other permitted remedy, at the request of the Beneficiary, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Trustor at such time and place as Trustee designates. Trustee shall give notice of sale including the time, terms and place of sale and a description of the property to be sold as required by the applicable law in effect at the time of the proposed sale.
- Upon sale of the property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges and costs, shall pay to Beneficiary all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Trustor. Beneficiary may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein. All remedies are distinct, cumulative and not exclusive, and the Beneficiary is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Beneficiary of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Beneficiary's right to require complete cure of any existing default. By not exercising any remedy on Trustor's default, Beneficiary does not waive Beneficiary's right to later consider the event a default if it continues or happens again.
- 16. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Trustor agrees to pay all of Beneficiary's expenses if Trustor breaches any covenant in this Security Instrument. Trustor will also pay on demand any amount incurred by Beneficiary for insuring, inspecting, preserving or otherwise protecting the Property and Beneficiary's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Trustor agrees to pay all costs and expenses incurred by Beneficiary in collecting, enforcing or protecting Beneficiary's rights and remedies under this Security Instrument. This amount may

include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Trustor agrees to pay for any recordation costs of such release.

- 17. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," or "hazardous substance" under any Environmental Law.

Trustor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Beneficiary, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Beneficiary, Trustor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Trustor shall immediately notify Beneficiary if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Trustor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Trustor shall immediately notify Beneficiary in writing as soon as Trustor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
- 18. CONDEMNATION.** Trustor will give Beneficiary prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Trustor authorizes Beneficiary to intervene in Trustor's name in any of the above described actions or claims. Trustor assigns to Beneficiary the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
- 19. INSURANCE.** Trustor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Beneficiary requires. The insurance carrier providing the insurance shall be chosen by Trustor subject to Beneficiary's approval, which shall not be unreasonably withheld. If Trustor fails to maintain the coverage described above, Beneficiary may, at Beneficiary's option, obtain coverage to protect Beneficiary's rights in the Property according to the terms of this Security Instrument. All insurance policies and renewals shall be acceptable to Beneficiary and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Trustor shall immediately notify Beneficiary of cancellation or termination of the insurance. Beneficiary shall have the right to hold the policies and renewals. If Beneficiary requires, Trustor shall immediately give to Beneficiary all receipts of paid premiums and renewal notices. Upon loss, Trustor shall give immediate notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made immediately by Trustor. Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Beneficiary's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Trustor. If the Property is acquired by Beneficiary, Trustor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Beneficiary to the extent of the Secured Debt immediately before the acquisition.
- 20. ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Trustor will not be required to pay to Beneficiary funds for taxes and insurance in escrow.
- 21. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Trustor will provide to Beneficiary upon request, any financial statement or information Beneficiary may deem reasonably necessary. Trustor agrees to sign, deliver, and file any additional documents or certifications that Beneficiary may consider necessary to perfect, continue, and preserve Trustor's obligations under this Security Instrument and Beneficiary's lien status on the Property.

- 22. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Trustor signs this Security Instrument but does not sign an evidence of debt, Trustor does so only to transfer, mortgage and convey Trustor's interest in the Property to secure payment of the Secured Debt and Trustor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Beneficiary and Trustor, Trustor agrees to waive any rights that may prevent Beneficiary from bringing any action or claim against Trustor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Trustor agrees that Beneficiary and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Trustor's consent. Such a change will not release Trustor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Trustor and Beneficiary.
- 23. APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Beneficiary is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
- 24. SUCCESSOR TRUSTEE.** Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
- 25. NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one trustor will be deemed to be notice to all Trustors.
- 26. WAIVERS.** Except to the extent prohibited by law, Trustor waives any right regarding the marshalling of liens and assets, and hereby releases and waives all rights under and by virtue of the homestead exemption laws of this state.
- 27. OTHER TERMS.** If checked, the following are applicable to this Security Instrument:
- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
 - Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
 - Fixture Filing.** Trustor grants to Beneficiary a security interest in all goods that Trustor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
 - Additional Terms.**
- 28. STATEMENT OF CONDITION.** From time to time, as required by law, Beneficiary shall furnish to Trustor or its agent such statements as may be required concerning the condition of the Secured Debt. Beneficiary will charge a fee for such statements as may be permitted by law.
- 29. RECONVEYANCE.** Upon payment of all sums secured by this Security Instrument, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Security Instrument and any note or instrument evidencing the Secured Debt to the Trustee. Trustee shall reconvey, without warranty, the Property or that portion secured by this Security Instrument. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto." Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. Beneficiary will charge a fee for such reconveyance as may be permitted by law.

30. **RIDERS.** If checked, the following are applicable to this Security Instrument. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.

Third Party Rider

Leasehold Rider

Other N/A

SIGNATURES: By signing below, Trustor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Trustor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

Wynona L. Smith
WYNONA L. SMITH

12/13/04
(Date)

Kevin T. Smith
KEVIN T. SMITH

12/13/04
(Date)

(Date)

(Date)

(Date)

(Date)

ACKNOWLEDGEMENT:

(Individual)

STATE of

Nebraska

COUNTY of

Lancaster

The foregoing instrument was acknowledged before me this 13th December 2004 (date) by _____

Cathy Gillette

(name of person acknowledged)

Cathy Gillette
(Signature of Person Taking Acknowledgment)

Credit Union Specialist
(Title or Rank)



(Seal)

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Wells Fargo Bank, N.A.
P. O. BOX 31557
BILLINGS, MT 59107
DOCUMENT MANAGEMENT

(Serial Number, if any)

My commission expires: April 23, 2006