

FILED SARPY CO. NE
INSTRUMENT NUMBER
2008-13155
MAY -9 AM 8:48
Shirley J. Dowling
REGISTER OF DEEDS

COUNTER ah C.E. W
VERIFY ah D.E. P
PROOF TM
FEES \$ 35.50
CHECK # 1172210332
CHG _____ CASH _____
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SHORT _____ NCR _____

DEED OF TRUST

THIS DEED OF TRUST is made as of the 8th day of May 2008, by and among Earl Schmitt, a single person, and Beverly Norris, a single person, ("Trustor"), whose address is 10767 V Street, Omaha, NE 68127, Patrick J. Sullivan, member Neb. Bar Association ("Trustee"), whose mailing address is 1246 Golden Gate Drive, Suite 1, Papillion, Nebraska 68046, and Kenneth Tex and Stephanie Tex, as joint tenants with rights of survivorship, ("Beneficiary") whose mailing address is 13400 South 96th Street, Papillion, Nebraska 68046.

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 property located in the County of Sarpy, State of Nebraska, and legally described as follows (the "Property"):

Lot 5, Cornish Acres, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska

TOGETHER WITH, all rents, easements, appurtenances, hereditaments, interest 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, all crops raised thereon, and all water rights.

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

FOR THE PURPOSE OF SECURING:

- a. Payment of indebtedness in the total principal amount of **\$52,000.00**, with interest thereon, as evidence by that certain promissory note of even date (the "note") with a maturity date of May 1, 2010, executed by Trustor, which has been delivered and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals, thereof, and

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b. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate of 6.0% per annum, and

c. The performance of Trustor's covenants and agreements.

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 "Loan 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, charges, fees and all other sums as provided in the Loan 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 or demand and shall provide the beneficiary with evidence of the payment of the 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 AND REPAIRS. Trustor shall maintain fire and extended coverage insurance insuring the improvements and buildings constituting part of the Trust Estate for an amount no less than the amount of the unpaid principal balance of the Note (co-insurance not exceeding 80% permitted). Such insurance policy shall contain a standard mortgage clause in favor Beneficiary and shall not be cancelable, terminable or modifiable without ten (10) days prior written notice to Beneficiary. Trustor shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall the Trustor commit waste on or to the Trust Estate. The Beneficiary may enter upon and make inspections of the Property including the interior of any improvements. In the event the Beneficiary desires to enter and make inspections of the interior of any improvements, the Beneficiary shall provide the Trustor at least 24 hours notice prior to appearing.

4. ACTIONS AFFECTING TRUST ESTATE. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or power of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation, may make or do the same in such manner

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and to such extent as either may deem necessary to protect the security hereof. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence to title, court costs, appraisals, surveys and attorney's fees. Any such costs and expenses not paid within ten (10) days of written demand shall draw interest at the default rate provided in the Note.

5. 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 therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation awards, damages, rights of action and proceed awarded to Trustor (the "Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require.

6. FUTURE ADVANCES. Upon request of Trustor, Beneficiary, at Beneficiary's option, prior to reconveyance of the Property to Trustor may make future advances to Trustor. Such future advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

7. APPOINTMENT OF SUCCESSOR TRUSTEE. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to 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. SUCCESSORS AND ASSIGNS. This Deed of Trust applies to, innures 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 named as Beneficiary herein.

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 and said default in payment is not cured within 30 days from the date it is due, or

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(b) There has occurred a breach of default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan 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:

(i) 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 attorneys' 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 Loan Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale;

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

(iii) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate Official Records of the County in which the Trust Estate is located.

11. DUE ON SALE CLAUSE. In the event Trustor, without the prior written consent of Beneficiary, sells, further encumbers, transfers and / or conveys part or all of the property, by deed, land contract or any other means by which legal, beneficial or equitable title is transferred, beneficiary shall be entitled at its option to declare all sums secured hereby immediately due and payable and require prompt payment by Trustor. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of a subsequent occurrence.

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12. FORECLOSURE BY POWER OF SALE. Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary. Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed of deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee and Beneficiary, may purchase at such sale.

(b) As may be permitted by law, after deducting Trustee Fees, Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, trustee fees of not more than 1/2 of 1% of the gross sales price, reasonable attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; (c) to the payment of junior Trust Deeds, mortgagee or other lien holders; and (d) the balance, if any, to the person or persons legally entitled thereto.

(c) Trustee may in the manner provided by law, postpone sale of all or any portion of the Trust Estate.

13. REMEDIES NOT EXCLUSIVE. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the such indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held

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by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein 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 Loan 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 and 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 in the extent such action is permitted by law.

14. **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.

15. **GOVERNING LAW.** 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 law, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan 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.

16. **RECONVEYANCE BY TRUSTEE.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees. Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto".

17. **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 delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at this time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

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18. ACCEPTANCE BY TRUSTEE. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

19. INSPECTION. Beneficiary or its agent may make reasonable entries upon and inspections of the property. Beneficiary shall give Trustor notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

20. TRUSTOR NOT RELEASED; FORBEARANCE BY BENEFICIARY NOT A WAIVER. Extension of the time for payment or modification or amortization of the sums secured by this Security Instrument granted by Beneficiary to any successor in interest of Trustor shall not operate to release the liability of the original Trustor or Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against any successor in interest, refuse to extend time for payment, or otherwise modify amortization of the sums secured by this Security instrument by reason of any demand made by the original Trustor or Trustor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

Earl Schmitt
Earl Schmitt, Trustor
Beverly Norris
Beverly Norris, Trustor

STATE OF NEBRASKA)
)ss
COUNTY OF SARPY)

On this 8th day of May, 2008, before me, a Notary Public, qualified for said county, personally came Earl Schmitt and Beverly Norris, known to me to be the identical persons who signed the foregoing instrument as Trustor, and acknowledged the execution thereof to be their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at Sarpy, Nebraska, on the day last above written.

James R. O'Donnell
Notary Public

