

1999 HOUSE FINANCE AND TAXATION

HB 1406

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1406

House Finance and Taxation Committee

Conference Committee

Hearing Date January 26, 1999

Tape Number	Side A	Side B	Meter #
1		x	23.9
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

REP. MICK GROSZ, Introduced the bill. Introduced the bill for the local Register of Deeds.

DWAYNE 'DEWEY' OSTER, MCLEAN COUNTY REGISTER OF DEEDS, Testified in support. See written testimony.

REP. WARNER Is the zoning ordinance added at the register of deeds office or is it subject to the dollar a page thing, or is it added at the abstract office?

DWAYNE OSTER The abstractor would make a copy of our records, how ever they do it, then they would incorporate it into the abstract. I don't know what their fees are.

REP. HERBEL Related to page 2, where it states not more than a dollar per instrument page, can anyone charge less than the dollar?

DWAYNE OSTER I think all of us charge less than a dollar. I charge fifty cents per page, sometimes twenty five cents. Some charge one dollar now.

REP. WARNER Are there any plans to digitalize the microfilm?

DWAYNE OSTER Those that have computer systems will very well do that.

MAXINE OLSON HILL, BURLEIGH COUNTY REGISTER OF DEEDS, Testified in support of the bill. As the immediate past president of the National Association of Recorders and Elected Officials, she was made aware of several concerns of the recording industry. Practices vary from state to state. Here in North Dakota, we have a variety of practices and fees. The fees vary from no charge to a charge of one dollar per page. This bill would place in the century code, a method of charging per copy. We have a lot of large search companies and large corporations and businesses that want access to information. It is very frustrating to have varied rules and guidelines from town to town. I am currently chairing the National Property Records Industry Task Force. This committee is comprised of private industry representatives from the national notary association, the American land title association, the mortgage bankers association and others. They are also representatives from the public sector, and those are county clerks and recorders. We are committed to working together to identify problems, which will make property record systems more efficient and responsive to the public. This bill is an element in fairness. Whether you are a large commercial customer or my next door neighbor, the same fee should apply. In Burleigh County, we charge one dollar per page, all of our records are on microfilm. We are promoting a standard by what we are doing in this bill.

COLLEEN BERTSCH, ROLETTE COUNTY REGISTER OF DEEDS, Testified in support of the bill. See written testimony. She also related to letters which were attached to her written testimony.

SHEILA K. DALEN, WARD COUNTY REGISTER OF DEEDS, Testified in support of the bill. See written testimony. Attached also, is a chart of the Ward County Register of Deeds Fees for Services.

MARK JOHNSON, NORTH DAKOTA ASSOCIATION OF COUNTIES, Testified in support of the bill. See written testimony.

BRIAN R. BJELLA, ON BEHALF OF THE LANDMAN'S ASSOCIATION OF NORTH DAKOTA, Testified in opposition of the bill. See written testimony.

JIM HORNER, VICE-PRESIDENT OF THE NORTH DAKOTA GUARANTY AND TITLE COMPANY, ALSO REP. NORTH DAKOTA LAND TITLE ASSN., Testified in opposition of the bill. See attached testimony.

CLAUS LEMPKE, NORTH DAKOTA ASSOCIATION OF REALTORS, Testified in opposition of the bill. Have a problem with the public record that should be open to viewing or access. We don't object to cost for recording and storing instruments, but we do object to cost for viewing. Access is viewing. We object to the ability to charge for access.

JEFF HERMAN, PETRO-HUNT CORPORATION, BISMARCK, Testified in opposition of the bill. My company has been in business since oil was first found, and this is the worst time we have ever seen. This is not the time to be raising any fees. We are capped with our income.

STEVE PINE, PINE OIL COMPANY, BISMARCK, Testified in opposition of the bill.

Also stated this is not the time to be raising any fees. We need to control the costs.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 1-26-99, Tape #2, Side A, Meter # 9.8

REP. HERBEL Read from a note that was left for him from the Register of Deeds, Abstractors and Land Associations. They stated they could work with the bill with an amendment attached.

The amendment was submitted by Jim Horner.

Committee members discussed the pros and cons of the amendments.

REP. CLARK Made a motion to adopt the amendments.

REP. WIKENHEISER Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. HERBEL Made a motion for a DO PASS AS AMENDED.

REP. WARNER Second the motion. MOTION CARRIED

11 Yes 3 No 1 Absent

REP. GROSZ Was given the floor assignment.

COMMITTEE ACTION 1-27-99, Tape #2, Side A, Meter #41.0

Committee members had received complaints regarding the amendments which were passed out of committee on this bill. Rep. Belter stated he would hold the bill until everyone was satisfied with the amendments or new amendments would be drafted.

COMMITTEE ACTION 2-1-99, Tape #2, Side A, Meter # 42.1

REP. GROSZ Made a motion to reconsider the action by which the bill was passed out of committee. REP. MICKELSON Second the motion. MOTION CARRIED BY VOICE VOTE

REP. GROSZ Explained the amendments which were prepared by the legislative council.

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House Finance and Taxation Committee

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No fees were added.

REP. MICKELSON Made a motion to adopt the amendments as presented.

REP. GRANDE Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. MICKELSON Made a motion for a DO PASS AS AMENDED.

REP. GRANDE Second the motion. MOTION CARRIED

14 Yes 0 No 1 Absent

REP. GRANDE Was given the floor assignment.

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1406

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Signature



John Walstad
Code Revisor

Please type or use black pen to complete

Date 1-26-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1406

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Rep. Herbel Seconded By Rep. Warner

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH		✓
RENNERFELDT		✓	<i>Not considered</i>		
CLARK	A	✓			
FROELICH					
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 11 3
(Yes) (No)

Absent 1

Floor Assignment Rep. Grosz

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 2-1-99

Roll call vote # 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1406

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep. Mickelson Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	A				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 0
(Yes) (No)

Absent 1

Floor Assignment Rep. Grande

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1406: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1406 was placed on the Sixth order on the calendar.

Page 2, line 2, remove "In addition, a"

Page 2, remove lines 3 and 4

Page 2, line 17, replace "seven" with "five"

Page 2, line 18, replace "three" with "two"

Page 2, line 20, remove the overstrike over "~~five~~" and remove "seven"

Page 2, line 21, remove the overstrike over "~~two~~" and remove "three"

Page 3, line 3, replace "to" with "for duplicating"

Page 3, line 6, remove "If procedures have been established, the register of"

Page 3, remove lines 7 through 9

Page 3, after line 9, insert:

"7."

Page 3, line 10, after "Duplicate" insert "register of deeds"

Renumber accordingly

1999 SENATE FINANCE AND TAXATION

HB 1406

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1406

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
Committee Clerk Signature <i>Sheila Wald</i>			

Minutes:

Sen Urlacher opened the hearing on HB 1406, A BILL RELATING TO REGISTER OF DEEDS FEES AND RECORDING CERTIFICATES.

Rep. Grosz - Introduced the bill.

Dwayne Oster - Register of Deeds, McLean County - Submitted testimony and that is attached.

Sen. Urlacher - Do you have an idea of what opposition there is to this bill?

Dwayne Oster - Oil & Gas opposes all these amendments. They fear that documents they present will not be up to standard forms and we will reject their request to register them.

Sen. Wardner - I have a question on the labels - side of document, is it used just for scanning?

Dwayne Oster - Yes.

Sheila Dahlen - Minot - Register of Deeds. Submitted testimony and it is attached.

Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number Hb 1406

Hearing Date 3-2-99

Janelle Beneda - Walsh Co. Register of Deeds. Support this bill and amendments by Dwayne

Oster, I support a Do Pass.

Bryan Bjella - Landmans Association of ND - Testimony submitted and attached. I would like to reject the House amendments, but not the new ones submitted.

Terry Traynor - ND Association of Counties - Support bill and the amendments presented today.

I suggested we get documents computerized and improve the system.

Sen. Schobinger - How many States have !' or more on their documents?

Terry Traynor - 26 States.

Claus Lembke - ND Association of Realtors - Support engrossed bill the way it came over from the House. Our concern, access, physical or equipment to copy, this should not be a problem.

Charges should be .0, because a penny would be too much.

Lowell Ridgeway - ND Petroleum Council - Support the bill as it passed the House and not with the amendments presented here today.

Jeff Herman - The 1' margins for RODs could be a national standard and we would not have a problem.

Sen Schobinger - Of the 26 States, 5 have 1/2' margins.

Sen Stenhjem - The Register of Deeds, belongs to the citizens of ND and should be open to the public.

Sen Urlacher asked for any more discussion or testimony. Closed the hearing.

3-9-99 Tape B 3680 -

DISCUSSION TO RECOGNIZE 1406 AMENDMENT.

MOTION MADE BE SEN. SCHOBINGER TO ACCEPT THE AMENDMENT 98289.0301,

AND SECONDED BY SEN. WARDNER. VOICE VOTE 7-0-0. SEN. WARDNER MADE A

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Senate Finance and Taxation Committee
Bill/Resolution Number Hb 1406
Hearing Date 3-2-99

MOTION TO DO PASS AS AMENDED AND SECONDED BY SEN SCHOBINGER.

CARRIER OF THE BILL WILL BE SEN SCHOBINGER. VOTE 7-0-0.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 2, lines 11 through 13, remove the overstrike from "Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which must be a single charge of seven dollars."

Page 2, lines 13 through 16, remove "Subdivision, annexation, vacation, and dedication plats, ten dollars for one lot plus ten cents for each additional lot. Irregular tract or outlot plats and auditor's lot plats, five dollars for the first page and two dollars for each additional page."

Page 2, after line 16, insert:

- "d. All instruments presented for recording after July 1, 2001, must contain a one inch (2.54 centimeters) top or bottom or side margin on each page of the instrument for the placement of computerized recording labels. An instrument which does not conform to said margin requirement shall only be recorded upon payment of an additional fee of two dollars per instrument."

Renumber accordingly.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 2, line 11, remove the overstrike over "~~Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for~~"

Page 2, remove the overstrike over line 12

Page 2, line 13, remove the overstrike over "~~charge of seven dollars.~~" and remove "Subdivision, annexation, vacation, and dedication"

Page 2, remove lines 14 through 16

Page 2, after line 16, insert:

"d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of two dollars."

Renumber accordingly

Date: 3/9/99
 Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1406

Senate Senate Finance and Taxation Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass ^{enrolled} ~~as amended~~

Motion Made By Wardner Seconded By Schobinger

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Schobinger

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1406, as engrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1406 was placed on the Sixth order on the calendar.

Page 2, line 11, remove the overstrike over "~~Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for~~"

Page 2, remove the overstrike over line 12

Page 2, line 13, remove the overstrike over "~~charge of seven dollars.~~" and remove "Subdivision, annexation, vacation, and dedication"

Page 2, remove lines 14 through 16

Page 2, after line 16, insert:

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Renumber accordingly

1999 TESTIMONY

HB 1406

North Dakota



Register of Deeds Association

Dwayne J. Oster
McLean County
President

Vicki Kubat
Cavalier County
1st Vice President

Karen Samek
Stutsman County
2nd Vice President

Ann Johnsrud
McKenzie County
Secretary-Treasurer

TO: Representative Belter and Members-House Finance and Taxation Committee

FR: Dwayne "Dewey" Oster, McLean County register of deeds/Pres. ND ROD Assn.

RE: HB 1406-relating to ROD fees and recording certificates

I'm present this morning to introduce and voice support for HB 1406. I wish I were more adept at public speaking like some other folks in this room....but I'll try to do my best.

I have worked on this testimony for sometime and with storm clouds on the horizon in opposition I was going to scale back...maybe even offering an amendment....but after reviewing all of your bio sketches and learning that many of you are veterans, Legionnaires and even Lutherans....I thought....golly...."they are just like me....they will listen and they will decide....that's the function of a legislator".

This bill can best be described as a hodge podge of various items. Initially the Register of Deeds (ROD) legislative committee had several bill drafts, but upon advice of the Legislative Council it was thought best to put all of our proposals into one. It would make it easier for tracking purposes. So this is what we came up with. The bill hits on two areas 1) "housekeeping" initiatives and 2) fees. With some a combination of both. At the outset let me state for the record that this bill does not raise any recording fees. The fees for recording instruments will remain the same as they have been since 1993. We were told in the last session that if additional revenue was to be generated for our offices then it would have to come from user's fees.

Under Housekeeping:

1) 11-18-05-1.(4) and 11-18-11 work together to clarify where a ROD can place his recording certificate. There was confusion/ambiguity if the certificate could be placed on the front side or on the last page of an instrument. The changes allow for flexibility, with recording data to be placed on either the first or last page of a document. In addition, with the computer age, we are asking that you consider putting into law that a one inch top or bottom margin be required on each page of an instrument presented for recording. Many of us now have computerized systems for recording and the margin will allow for adequate space for computer generated recording labels. (*Demonstrate to committee using a recorded instrument*) Other states have enacted similar laws and the trend nationally is to eventually further standardize recording requirements.

2) 11-18-05-01-c. This section improves the wording and addresses all the types of plats the ROD office records.

3) 11-18-05-5. This is a “housekeeping” change to include new wordage for the ROD office to conform to all the fees in the Central Indexing System (CIS) as they appear elsewhere in the NDCC. The changes were received from the SOS office.

Under Housekeeping and Fees:

1) 11-18-05-02 and 4. RODs file other types of instruments such as monument corners, bill of sales which are not a part of the CIS system. The use of the term “non-central indexing system” addresses this. In #4, fees for making a copy of these types of instruments is addressed. Fees are not being changed; although a fee is being established for making a certified copy.

2) 11-18-05-3. When the recording fees were changed in 1993 one area that was not addressed was the certified copy fee for a recorded instrument. A certified copy had always been the same fee as for recording the instrument. It causes confusion when there are two separate fees. This bill draft solves that problem. Fees for recording a real estate instrument and for making a certified copy will be the same.

A second portion of this section deals with the fee a ROD can charge for a non-certified copy of a recorded instrument. The register of deeds have never had a NDCC fee established for this service. We have only been guided by the “reasonable fee” statute (NDCC 44-04-18). A “reasonable fee” for a copy of the public record...as determined by the attorney general’s office...is an amount equal to the cost of reproducing that record. We believe our records are worth more than a few cents; hence our proposal “of not more than \$1.00 per instrument page”. We have been told that a set fee takes priority over the “reasonable” law. This user fee proposal addresses the wide variety of copy fees now used by the state’s 53 RODs and still falls within that term of “reasonable”. Keep in mind this is a copy of something that has great value....some importance....you can can’t find this information anywhere else. What is 50¢ or a \$1.00....one can hardly buy a cup of coffee for that price!!! To my abstractor, land title people, realtor friends....you have been charged reasonable rates for copies in the past and things aren’t going to change. This simply puts what we have been doing into law and puts a “cap” on it.

Under Fees:

1) 11-18-05-06. This section is entirely new. This “baby” appears to be stirring up a hornet’s nest. I suppose you might say I am biased, but as a register of deeds for nearly 25 years I have come to view the real estate records under my custodial care as something so valuable that one cannot really put a price tag on it. They are the equivalent of a Mona Lisa. Each of the 53 counties has a set of records unique unto themselves. They do not exist anywhere else. They are in effect irreplaceable. The records are the foundation for much of county government. The

disaster in the Red River Valley during the spring flood of 1997 and the partial destruction of the Grand Forks County ROD records graphically illustrates this point.

It used to be for many, many years if the public or users needed to view our records, they had to come to the courthouse and page through the volumes of books in search of their information. Now with advent of the computer, copier and microfilm age, the way we do business has been forever changed. Now all of a sudden our records are more accessible and they can be readily reproduced and the private sector out there sees an opportunity to make some money.

Many of the ROD offices have moved to the computer age and have the capabilities to provide information in various forms unlike never before. Finally it was felt that the time was "now" for RODs to address this "new era" demand for our valuable records. If private enterprise is to make money and I don't deny anybody that right....after all our great county thrives on this system....then the county should be able to recoup some of the costs that the taxpayers have paid over the past 100 years to maintain the records. We feel the county coffers should benefit above and beyond the "reasonable" but still within the range of "fair".

An incident which further triggered the drafting of this portion of HB 1406 occurred in a western North Dakota county recently. Over 200 rolls of microfilm....with over 2,000 images on each roll....were reproduced for a private entity....and the county did not make one penny on the procedure!! It was basically done for nothing, except for travel expenses. Furthermore, the county had to give up their only security rolls in making the copies to satisfy the request of the user. This is risky and dangerous in my opinion. This was all done under the guidelines that the ROD office records are public and we have to provide access, charging only fees which are reasonable. Reasonable I can understand....but absolutely free....that borders on ridiculous!!

If I may take this a step further...in McLean County there are approximately 300,000 recorded instruments. If I compute two pages per instrument then I have 600,000 images-lets call it a half million. Now if some entity wants to reproduce all those images to set up an abstracting business or an oil/gas title business, shouldn't the county receive some compensation? At a penny a page the fee would come to \$5,000.00, at 5¢ it would be \$25,000.00. At the other extreme end of the proposed fee scale....at \$1.00....you would have \$500,000.00. That may seem like a lot. But some farmer friends of mine recently bought 540 acres of land for \$380,000.00. An investment...in a commodity that isn't made anymore....the soil...same goes for the ROD records. When an individual or entity wants to start a business or expand on a business, it costs!! Nothing is free....except maybe eternal salvation....and even there the good Lord has given us some precepts to follow!!

Now if a newly established title company does 200 abstracts a year at \$500.00 per that is \$100,000.00. He'd get his debt paid off faster than my farm friends. And to an oil company that "hits on a well"....we are talking peanuts. Who in heavens name starts a business these days for nothing. In years of service to the public I may have heard a few complaints about a recording fee being too high and a scant grumble about fees for making a copy. But I've heard tons of

squawking about the high cost of an abstract or attorneys fees.

So what does this all mean? Where am I going with this. Well....this proposal would allow each ROD to establish a reasonable fee schedule unique to his or her office. Any entity or person requesting access to the register of deeds' records for the purpose of reproducing the records using on or off-site equipment or personnel would be subject to a fee. We needed a certain amount of flexibility in that we all have different systems and costs....which accounts for the fees' variation under the new statute. We believe that the fees continue to remain reasonable while providing the continued public access as per guidelines under NDCC 44-18-04. And in the area of access, the RODs have always had rules and guidelines on how the records are to be searched within their respective offices. Without some rules for access, I'd like to know how one could handle 25 land title people in an ROD office at one time searching the records. Furthermore under this section of HB 1406, duplicate records which serve as security would not be available for reproduction. This is very important and needs to be implemented.

I believe our good friends the abstractors have some concerns on this bill....involving the phrase, "not to exceed one dollar per instrument page"....but no abstractor in the state has ever been overcharged by a ROD and I don't think it is going to start now. In fact, this law might offer protection to the local abstract office and prevent the wholesale copying of county records and new abstract offices being established.

We are at a cross roads....committee members....are the ROD records to provide some sort of a reasonable "revenue stream" to the counties....any of which could use an influx of some new monies into the county coffers....or are we virtually to give everything away for little or nothing? And believe me....I don't think there is one county commissioner that would turn down some extra income which would help provide a tax break to their constituents or repair a county road that has long been in disrepair.

We'd like to be considered a progressive player in this computer age....to provide new and beneficial services to all our users....but we'd also like a bit of revenue to come into the county for services rendered....with some of that revenue ultimately to filter down into our offices to continue the computer age technology enhancements that everyone is clamoring for.

I apologize for the length of this testimony but I now ask for a "do pass" on HB 1406 from this committee and with the assistance of other RODs in this hearing room, I'd be happy to answer any questions you might have. Thank you.

TO: Representative Belter and Members-House Finance and Taxation Committee

FROM: Colleen J. Bertsch, Rolette County Register of Deeds

Re: HB 1406-relating to ROD fees and recording certificates

I am Colleen Bertsch, the Register of Deeds from Rolette County. I'm present this morning to voice support for HB 1406. In particular the portion relating to charging "a reasonable fee, not to exceed one dollar per instrument page. etc.". As Dewey mentioned in his opening statement, the Registers of Deeds were told in the last session not to raise our recording fees as a way to fund increased costs of technology; but rather to institute a users fee for private individuals and agencies who, through access to our records, establish their own businesses.

I have been the Register of Deeds of Rolette County for twenty years, and during that time I have dealt with attorneys, oil companies, land surveyors, engineers, real estate appraisers, telephone companies, electric companies, private land owners, and abstractors--all of whom needed to copy certain real estate records to complete a business transaction--but didn't necessarily need a certified copy of that document. Twenty years ago the charge for a copy of a one or two page document in my office was \$.10. During this time the abstractor took their own microfilm copies and paid no fees to the county. In about 1982 the price was set at \$.25 for the copies the abstractor received--which were now being made by county employees on county owned equipment with county supplies. The fee for the public-at-large was set at \$1.00 per instrument based on an attorney general's opinion (copy attached) provided to Cass County regarding non-certified copies of recorded documents. My office still charges the \$1.00 per instrument for the public-at-large--ie attorneys, oil companies, appraisers, family history researchers. In the twenty-plus years I have worked in the office we have never had anyone dispute the charge as being too high, but rather have actually had people offer to pay more when they see how time consuming some searches for information can be. Surely if \$1.00 was a reasonable fee in 1982, charging the same \$1.00 per page in 1999 could not be considered unreasonable.

In about 1995 the abstractor's fee per page was raised to \$.50 per page in Rolette County. Their fee is lower than the public-at-large because they pay on a per page, not per instrument basis. Most private individual's copies we make consist of 1-2 pages, so I feel, as do my County Commissioners, the fee is a fair and reasonable fee.

Since the Register's of Deeds have only raised non-certified copy fees twice (in some cases probably less than that) in twenty years, I feel we have proven we are a responsible Association that is trying to find a reasonable way to fund

the high costs of technology without raising recording fees for ALL individuals; but rather to receive the fees from the individuals and companies that repeatedly use our records and in essence make a profit from information they receive now at no cost in some counties, and a very minimal fee in others. The people who use the records are the same ones who cause the wear and tear on the books or other recording medium. Should they not be the ones who pay to have the records restored or in most cases transferred to a different medium, which withstands the high usage required--in other words to computerization or other advanced technology?

The Register's chose the wording NOT TO EXCEED \$1.00 because of the many different recording methods presently in use in the 53 counties. It made sense to us that a paper copy is probably going to be a lot cheaper to reproduce than say a microfilm copy that needs to be converted to a paper copy, or a copy from a computer generated original. By giving each county some leeway, we hoped to establish a standard that could work for everyone without having to come back to the Legislature for every \$.10 increment we needed to cover costs.

We have not written this Legislation without putting a lot of time and thought into it. All 53 counties have different needs, but we feel we need to be as consistent throughout the State as we can possibly be and we hope you will agree with us on the issue of the USERS NEED TO PAY FOR THE VALUABLE INFORMATION THEY RECEIVE FROM THE COUNTIES--SO THE COUNTIES WILL BE ABLE TO CONTINUE TO PROVIDE THE INFORMATION IN A COST EFFECTIVE MANNER.

Thank you for your attention, I'll be happy to answer any questions you might have.

MAIRIE LIVERSAGE
DEANNA KENSURD
DEBORAH KORSMO
DONALD COOKE
RUTH HELLEM
DONALD J. RUDNICK
ROBERT HOY
DR. MICHAEL MURLEY
CLARENCE MILLER
FRANK J. RICHARD
FORUM

TREASURER
REGISTER OF DEEDS
SUPT. OF SCHOOLS
COUNTY JUDGE
CLERK OF DIST. COURT
SHERIFF
STATES ATTORNEY
COUNTY CORONER
DIR. OF TAX EQUALIZ.
SURVEYOR
OFFICIAL PAPER

Cass County

NORTH DAKOTA

FARGO, N. D.

PATRICIA WOOD
FARGO N.D.
H.A. HENDRICKSON
FARGO N.D.
RAY LARSON
FARGO N.D.
DON ECKERT
FARGO N.D.
JEANNETTE STANTON
FARGO N.D.

November 26, 1982

D. N. Baria
Box 8067, UND Station
Grand Forks, ND 58202

Dear Mr. Baria:

Mr. Robert Hoy, States Attorney, and Mr. Duane Hoehn, County Auditor, have asked me to respond to the letters they received from you regarding my charges for copies of recorded instruments.

First of all, I would like to point out that there is a difference between filed instruments and recorded instruments. For filed instruments the copies would cost \$1.00 per instrument as shown in 11-18-05 subsection 6 of the North Dakota Century Code (copy enclosed). Please note that the code does not differentiate between certified copies of filed instruments or non-certified copies of filed instruments. The charge is the same, \$1.00 per instrument. Filed documents include Uniform Commercial Code instruments, notices of intent to drill, and monument corner records, etc. These documents generally consist of only one page, which makes the \$1.00 charge realistic.

Recorded instruments are mentioned in NDCC 11-18-05 subsection 4, which refers to subsection 1 (a). The charge is established as \$5.00 for the first page and \$2.00 for each additional page for certified copies of recorded documents. Please note that there is no provision in the NDCC for providing non-certified copies of recorded documents; and yet we receive many requests, like yours, for this service. In an effort to accomodate the general public, we do upon request, provide these courtesy copies at what we feel to be a reasonable fee of \$1.00 per page. Our only alternative would be to discontinue providing non-certified copies of recorded documents, and only provide certified copies of recorded documents at the specified charge of \$5.00 for the first page and \$2.00 for each additional page. In my opinion, this would not be serving the best interests of the general public.

I hope that the above information answers any questions that you might have concerning our charges.

Sincerely,


Deanna Kensrud
Register of Deeds

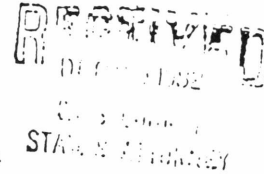
c.c. Robert Hoy, Cass County States Attorney
Duane Hoehn, Cass County Auditor



STATE OF NORTH DAKOTA
Robert C. Wefald
Attorney General
State Capitol
Bismarck, North Dakota 58505

701 224 2210

December 29, 1982



D. N. Baria
Box 8067
UND Station
Grand Forks, North Dakota 58202

Dear D. N.:

Thank you for your letter of December 17, 1982, concerning your question as to the proper fee for obtaining non-certified copies of deeds and mortgages from a register of deeds.

Please understand that the Attorney General and members of his staff are not authorized to give legal advice, assistance, or render legal opinions to private businesses or members of the general public. Instead, we may only serve as legal advisors to state officials, state's attorneys, and certain city officials. However, we do offer the following general discussion for your assistance which should not be considered as a formal legal position of this office.

It is clear that your goal is to obtain non-certified copies of deeds and mortgages. These instruments are recorded instruments pursuant to Section 11-18-01(1) of the North Dakota Century Code (a copy of which is enclosed with this letter). As these documents are recorded documents, as opposed to filed instruments, the copy fee provided for in Section 11-18-05(6), N.D.C.C., is not applicable.

However, the only other fee provided for by statute is that in Section 11-18-05(4), N.D.C.C., which refers to certified copies of recorded instruments. No specific statutory fee is provided for the making of non-certified copies of recorded instruments.

As such, the register of deeds is free to refuse your request for making a non-certified copy of a recorded instrument. Or, the register of deeds may insist that he can only make a certified copy of such instrument and charge you that particular fee (\$5.00 for the first page and \$2.00 for each additional page). If your experience has been that you have obtained non-certified copies of recorded instruments for a fee less than \$5.00 for the first

D. N. Baria
December 29, 1982
Page 2

page and \$2.00 for each additional page, then it would appear that you were charged a lesser amount than that which could be charged under Section 11-18-05, N.D.C.C.

Sincerely,

Terry L. Adkins
Assistant Attorney General

pg
Enclosure
cc: Robert Hoy
Cass County State's Attorney

To: Chairman Wesley R Belter
Finance & Taxation Committee

From: Sheila K Dalen
Ward county Register of Deeds

Re: HB 1406 Amendment to Sec 11-18-05

I come here today to support HB 1406, several counties have struggled with copy fees and reproduction fees in the past. The hands of the counties are tied by open records laws when it comes to trying to advance systems within the county. In establishing some fees, the counties can generate some revenue. Unless established by law we provide access, copies etc. for nothing to records that are invaluable.

Along with my testimony today I have provided a copy which our county has set up a fee schedule based on the open record laws, using the reasonable fees statement that appears throughout the open record laws. In my county this works fine, but this too is based on actual costs. There is no profit to the county. This bill is only asking that a law be set out allowing counties to charge for what is being accessed and copied for profit at the time and expense of the county. Open records laws to me were intended to insure the taxpayers paying to maintain, house and preserve the records, access to them. This is the way it should be. The bill before you will not change that, it is the business sector that is driving this bill. Copying these records for profit at no cost only serves as an enticement. We are fast being approached to copy complete sets of records if not the entire office full of records to establish new businesses. We do not feel this was the intent of the open records laws which they are hiding behind. We would ask that you consider a do pass for the bill and establish a separate law with which to handle the requests the business sectors are putting on the counties.

**WARD COUNTY REGISTER OF DEEDS
FEES FOR SERVICES**

Service	Description	Cost	Notes
Daily Images	Each workday the customer will receive a zip disk containing the images for the prior workday.	\$0.035 per image	Customer must have an Iomega Zip drive that is compatible with ours. We will supply the needed zip disks. The disks are reused and must be returned to our office promptly.
Images on Disk	Customer will receive requested images on diskette.	\$0.035 per image	This service may also require a Report Design fee.
Standard Report	A report which contains information from the database that can be designed with the CRIS+ <i>plus</i> user defined report writer.	\$0.25 per page	No user fields will print on this type of report.
Custom Designed Report	A report which is customized to specifications requested by the customer.	\$25.00 design fee and, \$0.25 per page	Any field may be selected for this report.
Documents on CD	Documents requested by customer on CD	\$0.035 per image	This service may also require a Report Design fee.
Copies	Copy of any recorded instrument.	\$1.00 and \$.25 per image	\$1.00 for first 4 pages or any portion thereof. An additional \$0.25 per page thereafter.

**TESTIMONY TO THE
HOUSE FINANCE & TAXATION COMMITTEE
Prepared January 26, 1999, by the
North Dakota Association of Counties
Mark A. Johnson, Executive Director**

CONCERNING HOUSE BILL NO. 1406

Chairman Belter and members of the House Finance and Taxation Committee, I am here on behalf of the North Dakota Association of Counties to express our support for House Bill 1406. The "housekeeping" items Mr. Oster explained, along with the setting of certain user fees, will help create a more uniform set of fee guidelines and bring current law up-to-date with the duties of today's register of deeds.

In the past, certain user fee charges were only governed in state law by what is "reasonable." This has sometimes created problems, because what may seem reasonable to one person may seem outlandish to another. House Bill 1406 seeks to more clearly set certain user fees, thereby putting a limit on what is a "reasonable" fee.

Registers of deeds spend many hours annually, away from their filing and recording duties, compiling information for individual outside entities. It has always been the position of this Association that if a county provides a specific individual or business with a specific service not generally available or requested by others, that specific individual or business should pay the cost of conducting that service, not all of the taxpayers of the county.

Mr. Chairman and committee members, we support the efforts of the Register of Deeds Association and urge you to give House Bill 1406 a favorable recommendation.

Chairman Belter, members of the House Finance and Tax Committee, my name is Brian R. Bjella and I am appearing before you today on behalf of the Landman's Association of North Dakota ("LAND"), for whom I serve as education chairman.

LAND is an professional organization with 174 members, who are landmen working in the oil and gas and coal industries in North Dakota. A substantial part of their time is spend in the various Register of Deeds' offices in western North Dakota, researching title. In a typical week, a landman may search records in 2 or 3 different counties.

LAND has several concerns regarding House Bill No. 1406. First, at the top of page 2, this \bill would require that all documents have a one-inch top or bottom margin. Most landmen use preprinted forms that do not have that large of a margin. This may prevent these forms, most of which are used nation-wide, from being used in North Dakota.

Second, Section 3 on page 2 proposes to increase the fee for certified copies from \$5.00 to \$7.00 for the first page and from \$2.00 to \$3.00 for each additional page. We question the need for this increase.

Our real concern, however, is with Section 6 on page 3 of the bill. This section would allow the Register of Deeds to establish procedures for access to records. We are concerned that, if approved, policies could be established to limit the number of hours their public records are available to the public.. Landmen are very concerned with any language that could limit their access.

Section 6 also allows the register of deeds to levy a fee not to exceed \$1.00 per page to any person requesting access for the purpose of reproducing the records. These are public records and the public should have free and open access to them. As we understand the bill, this fee would be in addition to a charge of up to \$1.00 per page for copying. This effectively allows a \$2.00 per page copying charge which is excessive.

The oil and gas industry in North Dakota and the entire nation is in a serious economic crises. This type of unjustified fee increase only makes our situation more serious.

LAND respectfully requests that either the bill receive a do not pass recommendation or that it be amended to eliminate these provisions. Thank you for your consideration.

CHAIRMAN BELTER AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, MY NAME IS JIM HORNER, AND I AM A REGISTERED LOBBIEST FOR THE NORTH DAKOTA LAND TITLE ASSOCIATION. I AM ALSO VICE PRESIDENT OF THE NORTH DAKOTA GUARANTY & TITLE COMPANY AND PART OWNER. ON BEHALF OF THE NORTH DAKOTA LAND TITLE ASSOCIATION I AM HERE TO TESTIFY IN OPPOSITION TO HOUSE BILL NO. 1406.

THE REASON FOR THE OPPOSITION TO THE BILL IS BECAUSE OF ITEM NO. 6 ON PAGE 3 OF THE BILL. IT IS NOT CLEAR AS TO WHAT WILL BE DONE. IN SPEAKING TO THE REGISTER OF DEEDS THEY ARE TRYING TO COVER THE COST OF DUPLICATING RECORDS. HOWEVER, THIS BILL AS WRITTEN COVERS ACCESS TO THE RECORDS ALSO. WE HAVE TO REMEMBER THAT THE WHOLE REASON FOR THE RECORDING SYSTEM IS SO THAT THE PUBLIC CAN EXAMINE WHAT DOCUMENTS ARE ON RECORD THAT AFFECT REAL ESTATE AND TO GIVE NOTICE TO THE PUBLIC OF THE DOCUMENTS THAT EXIST.

AS AN ABTRACTOR WE MUST HAVE ACCESS TO THE RECORDS DAILY. AS AN ABTRACTOR TO BE ABLE TO DO BUSINESS IN THE STATE OF NORTH DAKOTA WE HAVE TO HAVE A PLANT. THAT MEANS WE HAVE TO HAVE ALL OF THE RECORDS THAT EXIST AT THE OFFICE OF THE REGISTER OF DEEDS. WE GET ALL OF THESE RECORDS ON A DAILY BASIS. WE ARE NOT OPPOSED TO PAYING THE COST OF OBTAINING THESE RECORDS, AND MOST ABSTRACTORS AND REGISTER OF DEEDS HAVE MADE ARRANGEMENTS TO GET THESE COPIES OF THE RECORD IN WHATEVER FASHION THAT IS BEING USED.

THIS WOULD APPEAR TO ALLOW THE REGISTER OF DEEDS IN ANY COUNTY TO CHARGE UP TO \$1.00 PER PAGE FOR ANY COPY OR ACCESS TO ANY DOCUMENT. AS AN ABSTRACT COMPANY OUR FEES OF ALSO SET BY LAW. THE MAXIMUM THAT CAN BE CHARGED IS \$5.00 PER ENTRY. MANY OF THESE DOCUMENTS AS RECORDED HAVE MORE THAN 5 PAGES. I WOULD GUESS THAT THE AVERAGE NUMBER OF PAGES PER DOCUMENT WOULD BE ABOUT 3 OR 4 PAGES. WE WOULD HAVE TO FIND A WAY TO PASS SOME OF THIS COST ONTO THE COMSUMER IN ORDER TO STAY IN BUSINESS.

INSOFAR AS USING THE SECURITY RECORDS OR RECORDS STORED OFF-SITE, WE AGREE THAT THEY SHOULD NOT BE MADE AVAILABLE TO BE USED FOR REPRODUCTION. IF SOMETHING WOULD HAPPEN TO THE SECURITY RECORDS, THE COST TO THE COUNTY TO PRODUCE ANOTHER SECURITY ROLL COULD BE VERY EXPENSIVE.

February 29, 1999

TO: Chairman Urlacher
Members Senate Finance and Taxation Committee

FROM: Sheila K Dalen, Ward County Register of Deeds

I would like the committee to focus on Subsection 6 of HB1406; this is the new portion of this bill that deals with duplicating records.

The bill came out of the House with an amendment. One problem with the original version was the word "access". There was testimony given at the hearing stating a fear that people viewing the records would be charged for it. The other fear was the portion dealing with fees which stated "not to exceed 1.00 per instrument page" for duplicating records. The amendment did clarify the access was for duplicating but eliminated all wording for charging a fee.

The counties ability to charge a fee was the whole intent of this new subsection being added. Our offices are being approached to duplicate complete sets of records with no ability to charge anything. These are not ordinary taxpayers requesting a copy of their deed, but businesses requiring these records to set up shop. At present the county is required to provide these complete sets of records (which sometimes includes a copy of every document in our office) for absolutely nothing. 3560

We are asking the Committee to amend this bill again, the new amendment we would like you to consider removes the word "access" completely from the text so it cannot be interpreted as viewing. It also lowers the original version of the bill regarding fees from "not to exceed 1.00 per instrument page" to just 10 cents per instrument page. We realize with the amount of documents on record in a large county, it could get quite costly at 1.00 per page. Thus 10 cents is a reasonable fee.

I ask the committee to compare the now 3 versions of subsection 6 of HB1406 and pass this bill with amendments being offered today. We feel we have addressed the fears of the opposition in this latest redraft. I thank you for your consideration. 3645

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 2, line 2, insert: In addition, all real estate instruments presented for recording after July 1, 2000, must contain a one inch (2.54 centimeters) top or bottom or side margin on each page of an instrument for the placement of computerized recording labels.

Page 2, lines 11 through 13: remove the overstrike from “~~Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor’s lots which must be a single charge of seven dollars.~~”

Page 2, line 13 through 16: remove “Subdivision, annexation, vacation, and dedication plats, ten dollars for one lot plus ten cents for each additional lot. Irregular tract or outlot plats and auditor’s lot plats, five dollars for the first page and two dollars for each additional page.”

Page 2, line 18: overstrike “~~five~~” and replace with “seven”

Page 2, line 19: overstrike “~~two~~” and replace with “three”

Renumber accordingly

Page 3, lines 1 through 4: remove.

Page 3, line 1 insert: 6. The register of deeds may establish procedures and fees, not to exceed 10 cents per instrument page, for duplicating records under the register of deeds’ control. Such records include paper, photostat, microfilm microfiche, and electronic or computer generated instruments created by governmental employees.

Renumber accordingly.

Chairman Urlacher, members of the Senate Finance and Tax Committee, my name is Brian R. Bjella and I am appearing before you today on behalf of the Landman's Association of North Dakota ("LAND") for whom I serve as education chairman.

LAND is a professional organization with 174 members who are landmen working in the oil and gas and coal industries in North Dakota. A substantial part of their time is spent in the various Register of Deeds' offices in western North Dakota, researching titles. In a typical week, a landman may search records in two or three different counties.

LAND supports the bill in its current version.

LAND has several concerns regarding the proposed amendments. First, they would require that all documents have a one-inch margin. Most landmen use preprinted forms that do not have that large of a margin. This may prevent these forms, most of which are used nationwide, from being used in North Dakota. Concern is that documents not having such a margin would be rejected for recording. This would cause serious problems if documents have to be sent back and redone in order to be recorded.

Second, the amendments propose to increase the fee for certified copies from \$5.00 to \$7.00 for the first page and from \$2.00 to \$3.00 for each additional page. We question the need for this fee increase. All that is involved is copying the documents and placing the register of deeds stamp on it.

Our real concern is with amendments to page 3 of the bill. This would allow the Register of Deeds to levy a fee not to exceed 10¢ per page to any person for access for the purpose of reproducing the records. These are public records and the public should have free and open access to them. The Register of Deeds is not a for-profit business. In addition, no one has said that the Register of Deeds are not recovering the costs of recording documents. If someone uses their own photocopy equipment and paper, why should they be charged for access to public records. Also, it is not clear if this fee would be in addition to the charge of up to \$1.00 per page for photocopying records already provided for in page 2 of this bill.

The oil and gas industry in North Dakota and the entire nation is in a serious economic crisis. These additional recording requirements and fee increases would only make matters worse.

LAND supports the bill in its current version and urges you to reject the proposed amendments. Thank you for your consideration.

North Dakota



Register of Deeds Association

Dwayne J. Oster
McLean County
President

Vicki Kubat
Cavalier County
1st Vice President

Karen Samek
Stutsman County
2nd Vice President

Ann Johnsrud
McKenzie County
Secretary-Treasurer

TO: Chairman Urlacher and Members-Senate Finance and Taxation Committee

FR: Dwayne "Dewey" Oster, McLean County register of deeds/President ND ROD Assoc.

RE: HB 1406 - Relating to ROD fees and recording certificate

I'm present this morning to introduce and voice support for HB 1406 as it relates to register of deeds' (RODs) fees and recording functions.

This bill has passed the House with some very positive things for the state's ROD offices. During the committee hearings in the House, however, a couple of amendments were introduced some with our knowledge, others not. I'd like to address those problem areas this morning and offer some additional amendments to be considered by this committee as we strive for a "Do Pass" recommendation.

1) After Line 2, Page 2 of the Engrossed Bill adding the words...."In addition, all real estate instruments presented for recording after July 1, 2000, must contain a one inch (2.54 centimeter) top or bottom or side margin on each page of an instrument for the placement of the recording labels". The bill initially had in place a provision for spaces on an instrument. We have now added an effective date to provide users the time to comply with the law, we have stated the purpose of the law and we have added the word "side". In my testimony handout I am providing additional info to show that 26 states have some sort of requirement in this area and there is a national initiative to force the issue in the next year or two. If our users want us to keep pace with the new ways to do business they have to meet us halfway on this issue. 2405

2) Lines 11 through 16, Page 2....this amendment simply puts "everything" back the way it used to be. In our effort to try and improve the wording to address all the types of plats, I guess someone felt we were raising recording fees. As the bill was amended in the House, we would be going backwards when it comes to recording fees. So lets just leave it alone....rather than try and make improvements.

3) Lines 18 and 19, Page 2....we were told over and over and over again in last year's session that it is in the area of user's fees that revenue increases for the ROD offices should be realized. Therefore as proposed in the initial bill draft, change the page charge for a certified copy of a recorded instrument to \$7.00 for first page and \$3.00 for each additional page. It makes for the same page fee as for recording an instrument, making it much easier to service our customers. 2525

4) Item 6., Line 1 of Page 3. This is rewritten to address another user fees' issue. The

amendment in part reads as follows: "The register of deeds may establish procedures and fees, not to exceed 10 cents per instrument page, for duplicating records under the register of deeds' control. Such records include paper, photostat, microfilm, microfiche, and electronic or computer generated instruments created by governmental employees."

This segment of HB 1406 developed as a result of what occurred in a western North Dakota county recently. Over 200 rolls of microfilm....with over 2,000 images on each roll....were reproduced for a private entity....and the county did not make one penny on the procedure!! It was basically done for nothing, except for travel expenses. Furthermore, the county had to give up their only security rolls in making the copies to satisfy the request of the user. This is risky and dangerous in my opinion. This was all done under the guidelines that the ROD office records are public and we have to provide access, charging only fees which are reasonable. Reasonable I can understand....but absolutely free....that borders on ridiculous!!

Many of the ROD offices have moved to the computer age and have the capabilities to provide information in various forms unlike never before. Finally it was felt that the time was "now" for RODs to address this "new era" demand for our valuable records. If private enterprise is to make money and I don't deny anybody that right....after all, our great country thrives on this system....then the county should be able to recoup some of the costs that the taxpayers have paid over the past 100 years to maintain the records. We feel the county coffers should benefit above and beyond the "reasonable" but still within the range of "fair". 2726

This fees' item also addresses any entity which comes into the courthouse on any given day with their own equipment and wants to copy certain records. We don't feel a private business or any person should occupy county space, use county electricity and obtain valuable information for resale at no cost.

2788 We are at a cross roads....committee members.....are the ROD records to provide some sort of a reasonable "revenue stream" to the counties....any of which could use an influx of some new monies into the county coffers....or are we virtually to give everything away for little or nothing? We'd like to be considered a progressive player in this computer age....to provide new and beneficial services to all our users....but we'd also like a bit of revenue to come into the county for services rendered....with some of that revenue ultimately to filter down into our offices to continue the computer age technology enhancements that everyone is clamoring for.

We need the tools so we can enter the computer age....hence the request to approve label space on all instrument pages....and the request for some increase in user fees to help us generate some revenue to pay for the needed changes.

I now ask for a "do pass" on HB 1406 from this committee and with the assistance of other RODs in this hearing room, I'd be happy to answer any questions you might have. Thank you.

STATE MARGIN RECORDING REQUIREMENTS

- Arizona**.....2" top margin on first page, ½" other margins
- Arkansas**.....3" x 5" wide at bottom of last page
- California**.....2½" top margin, right hand 5" blank on first page; ½" other
- Colorado**.....all pages - 1" top margin; ½" other
- Florida**.....3" x 3" right hand top margin on first page; 1" x 3" on other pages
- Georgia**.....3" top margin or 3" x 5" top right margin on first page
- Hawaii**.....print on one side only: 3½" top margin on first page
- Illinois**.....3" x 5" top right had margin on first page; ½ other margins
- Indiana**.....first and last pages top & bottom - 2"; all other ½"
- Iowa**.....2" top margin on first page
- Kansas**.....sufficient space for recording information
- Louisiana**.....2" top margin on first page; all others 1"
- Michigan**.....2½" top margin on first page; all others ½"
- Minnesota**.....3" top margin on first page with title below; all others ½"
- Missouri**.....sufficient space
- Nebraska**.....2½" x 6½" blank top margin on first page; ½" vertical margins
- Nevada**.....3" x 3" at right hand bottom of last page
- New York**.....3" top margin on first page
- North Carolina**.....3½" at bottom of first page
- Oklahoma**.....all pages - 1" top margin; ½" other. Sufficient space for recording information
- Oregon**.....3" x 3" blank space at bottom of last page
- Tennessee**.....sufficient space for recording information
- Vermont**.....½" side margins
- Virginia**.....1" top, left & bottom; ½" right side
- Washington**.....special cover page or first page; 1" other pages
- Wisconsin**.....a special formatting of first page; others pages ½" top & ¼" other

After Recordation Return to:
 Gate City Federal Savings Bank
 304 E Rosser Ave
 Bismarck, ND 58501



3335667
 Page: 1 of 5
 03/01/1999 09:55A
 McLean Co., ND

MORTGAGE - SHORT TERM MORTGAGE REDEMPTION

BORROWER Jerome D. Simpfenderfer Judith K. Simpfenderfer	MORTGAGOR Jerome D. Simpfenderfer and Judith K. Simpfenderfer, husband and wife, as joint tenants and not as tenants in common, with the right of survivorship.
ADDRESS 118 Renner Rd Washburn, ND 58577	ADDRESS 118 Renner Rd Washburn, ND 58577
TELEPHONE NO. (701) 462-3465	TELEPHONE NO. (701) 462-3465
IDENTIFICATION NO.	IDENTIFICATION NO.

In consideration of the loan or other credit accommodation hereinafter specified and any future advances or future Obligations, as defined herein, which may hereafter be advanced or incurred and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby warrants and mortgages to Gate City Federal Savings Bank ; 304 E Rosser Ave, P.O. Box 1358, Bismarck, ND 58501

("Lender"), its successors and assigns, with power of sale and right of entry and possession all of Mortgagor's present and future estate, right, title and interest in and to the real property described in Schedule A which is attached to this Mortgage and incorporated herein by this reference, together with all present and future improvements and fixtures; all tangible personal property including without limitation all machinery, equipment, building materials, and goods of every nature (excluding household goods) now or hereafter located on or used in connection with the real property, whether or not affixed to the land; all privileges, hereditaments, and appurtenances, including all development rights associated with the real property, whether previously or subsequently transferred to the real property from other real property or now or hereafter susceptible of transfer from the real property to other real property; all leases, licenses and other agreements; all rents, issues and profits; all water, well, ditch, reservoir and mineral rights and stocks pertaining to the real property (cumulatively "Property"); until payment in full of all Obligations secured hereby.

Moreover, in further consideration, Mortgagor does, for Mortgagor and Mortgagor's heirs, representatives and assigns, hereby expressly warrant, covenant, and agree with Lender its successors and assigns as follows:

1. **OBLIGATIONS.** This Mortgage shall secure the payment and performance of all present and future indebtedness, liabilities, obligations and covenants of Borrower or Mortgagor (cumulatively "Obligations") to Lender pursuant to:

(a) this Mortgage and the following promissory notes and other agreements:

INTEREST RATE	PRINCIPAL AMOUNT/ CREDIT LIMIT	FUNDING/ AGREEMENT DATE	MATURITY DATE	CUSTOMER NUMBER	LOAN NUMBER
FIXED	\$47,501.90	02/26/99	03/06/04	585129806	03840006027261
7.75 %					

(b) all other present or future, written agreements with Lender which refer specifically to this Mortgage (whether executed for the same or different purposes than the foregoing);

(c) any guaranty of obligations of other parties given to Lender now or hereafter executed which refers to this Mortgage;

(d) future advances, whether obligatory or optional, to the same extent as if made contemporaneously with the execution of this Mortgage, made or extended to or on behalf of Mortgagor or Borrower. Mortgagor agrees that if one of the Obligations is a line of credit, the lien created by this Mortgage shall continue until payment in full of all debt due under the line notwithstanding the fact that from time to time (but before termination of the line) no balance may be outstanding. At no time shall the lien of this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed \$ 47,501.90; and

(e) all amendments, extensions, renewals, modifications, replacements or substitutions to any of the foregoing.

As used in this Paragraph 1, the terms Mortgagor and Borrower shall include and also mean any Mortgagor or Borrower if more than one.

2. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Mortgagor represents, warrants and covenants to Lender that:

(a) Mortgagor has fee simple marketable title to the Property and shall maintain the Property free of all liens, security interests, encumbrances and claims except for this Mortgage and those described in Schedule B which is attached to this Mortgage and incorporated herein by reference, which Mortgagor agrees to pay and perform in a timely manner;

(b) Mortgagor is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to "Hazardous Materials", as defined herein, and other environmental matters (the "Environmental Laws"), and neither the federal government or any other governmental or quasi governmental entity has filed a lien on the Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Mortgagor's knowledge, threatened, which involve the Property. Neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any Hazardous Materials, in connection with the Property or transported any Hazardous Materials to or from the Property. Mortgagor shall not commit or permit such actions to be taken in the future. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to, (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; and (vi) those substances, materials or wastes defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar state or federal statute, rule, regulation or ordinance now or hereafter in effect. Mortgagor shall not lease or permit the sublease of the Property to a tenant or subtenant whose operations may result in contamination of the Property with Hazardous Materials or toxic substances;

(c) All applicable laws and regulations including, without limitation, the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. (and all regulations promulgated thereunder) and all zoning and building laws and regulations relating to the Property by virtue of any federal, state or municipal authority with jurisdiction over the Property, presently are and shall be observed and complied with in all material respects, and all rights, licenses, permits, and certificates of occupancy (including but not limited to zoning variances, special exceptions for nonconforming uses, and final inspection approvals), whether temporary or permanent, which are material to the use and occupancy of the Property, presently are and shall be obtained, preserved and, where necessary, renewed;

(d) Mortgagor has the right and is duly authorized to execute and perform its Obligations under this Mortgage and these actions do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may be binding on Mortgagor at any time;

- (e) No action or proceeding is or shall be pending or threatened which might materially affect the Property; and
(f) Mortgagor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement (including, but not limited to, those governing Hazardous Materials) which might materially affect the Property or Lender's rights or interest in the Property pursuant to this Mortgage.

3. **PRIOR MORTGAGES.** Mortgagor represents and warrants that there are no prior mortgages affecting any part of the Property except as set forth on Schedule B attached to this Mortgage which Mortgagor agrees to pay and perform in a timely manner. If there are any prior mortgages then Mortgagor agrees to pay all amounts owed, and perform all obligations required, under such mortgages and the indebtedness secured thereby and further agrees that a default under any prior mortgage shall be a default under this Mortgage and shall entitle Lender to all rights and remedies contained herein or in the Obligations to which Lender would be entitled in the event of any other default.

4. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGORS OR BORROWERS.** In the event of a sale, conveyance, lease, contract for deed or transfer to any person of all or any part of the real property described in Schedule A, or any interest therein, or of all or any beneficial interest in Borrower or Mortgagor (if Borrower or Mortgagor is not a natural person or persons but is a corporation, limited liability company, partnership, trust, or other legal entity), Lender may, at its option declare the outstanding principal balance of the Obligations plus accrued interest thereon immediately due and payable. At Lender's request, Mortgagor or Borrower, as the case may be, shall furnish a complete statement setting forth all of its stockholders, members or partners, as appropriate, and the extent of their respective ownership interests.

5. **ASSIGNMENT OF RENTS.** In consideration of the Obligations, which are secured by this Mortgage, Mortgagor absolutely assigns to Lender all Mortgagor's estate, right, title, interest, claim and demand now owned or hereafter acquired in all existing and future leases of the Property (including extensions, renewals and subleases), all agreements for use and occupancy of the Property (all such leases and agreements whether written or oral, are hereafter referred to as the "Leases"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, all proceeds payable as a result of a lessee's exercise of an option to purchase the Property all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Mortgagor may have against any lessee under the Leases or any occupants of the Property (all of the above are hereafter collectively referred to as the "Rents"). This assignment is subject to the right, power and authority given to the Lender to collect and apply the Rents. This assignment is recorded in accordance with applicable state law; the lien created by this assignment is intended to be specific, perfected, and choate upon the recording of this Mortgage, all as provided by applicable state law as amended from time to time. As long as there is no default under the Obligations or this Mortgage, Lender grants Mortgagor a revocable license to collect all Rents from the Leases when due and to use such proceeds in Mortgagor's business operations. However, Lender may at any time require Mortgagor to deposit all Rents into an account maintained by Mortgagor or Lender at Lender's institution. Upon default in the payment of, or in the performance of, any of the Obligations, Lender may at its option take possession of the Property and have, hold, manage, lease and operate the Property on terms and for a period of time that Lender deems proper. Lender may proceed to collect and receive all Rents, from the property, and Lender shall have full power to periodically make alterations, renovations, repairs or replacements to the Property as Lender may deem proper. Lender may apply all Rents in Lender's sole discretion, to payment of the Obligations, or to the payment of the cost of such alterations, renovations, repairs and replacements and any expenses incident to taking and retaining possession of the Property and the management and operation of the Property. Lender may keep the Property properly insured and may discharge any taxes, charges, claims, assessments and other liens which may accrue. The expense and cost of these actions may be paid from the Rents received, and any unpaid amounts shall be added to the principal of the Obligations. These amounts, together with other costs, shall become part of the Obligations secured by this Mortgage.

6. **LEASES AND OTHER AGREEMENTS.** Mortgagor shall not take or fail to take any action which may cause or permit the termination or the withholding of any payment in connection with any Lease pertaining to the Property. In addition, Mortgagor, without Lender's prior written consent, shall not: (a) collect any monies payable under any Lease more than one month in advance; (b) modify any Lease; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Mortgagor's rights, title and interest in and to any Lease or the amounts payable thereunder; or (d) terminate or cancel any Lease except for the nonpayment of any sum or other material breach by the other party thereto. If Mortgagor receives at any time any written communication asserting a default by Mortgagor under a Lease or purporting to terminate or cancel any Lease, Mortgagor shall promptly forward a copy of such communication (and any subsequent communications relating thereto) to Lender. All such Leases and the amounts due to Mortgagor thereunder are hereby assigned to Lender as additional security for the Obligations.

7. **COLLECTION OF INDEBTEDNESS FROM THIRD PARTY.** Lender shall be entitled to notify or require Mortgagor to notify any third party (including, but not limited to, lessees, licensees, governmental authorities and insurance companies) to pay Lender any indebtedness or obligation owing to Mortgagor with respect to the Property (cumulatively "Indebtedness") whether or not a default exists under this Mortgage. Mortgagor shall diligently collect the Indebtedness owing to Mortgagor from these third parties until the giving of such notification. In the event that Mortgagor possesses or receives possession of any instruments or other remittances with respect to the Indebtedness following the giving of such notification or if the instruments or other remittances constitute the prepayment of any Indebtedness or the payment of any insurance or condemnation proceeds, Mortgagor shall hold such instruments and other remittances in trust for Lender apart from its other property, endorse the instruments and other remittances to Lender, and immediately provide Lender with possession of the instruments and other remittances. Lender shall be entitled, but not required, to collect (by legal proceedings or otherwise), extend the time for payment, compromise, exchange or release any obligor or collateral, or otherwise settle any of the Indebtedness whether or not an event of default exists under this Agreement. Lender shall not be liable to Mortgagor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Notwithstanding the foregoing, nothing herein shall cause Lender to be deemed a mortgagee-in-possession.

8. **USE AND MAINTENANCE OF PROPERTY.** Mortgagor shall take all actions and make any repairs needed to maintain the Property in good condition. Mortgagor shall not commit or permit any waste to be committed with respect to the Property. Mortgagor shall use the Property solely in compliance with applicable law and insurance policies. Mortgagor shall not make any alterations, additions or improvements to the Property without Lender's prior written consent. Without limiting the foregoing, all alterations, additions and improvements made to the Property shall be subject to the beneficial interest belonging to Lender, shall not be removed without Lender's prior written consent, and shall be made at Mortgagor's sole expense.

9. **LOSS OR DAMAGE.** Mortgagor shall bear the entire risk of any loss, theft, destruction or damage (cumulatively "Loss or Damage") to the Property or any portion thereof from any cause whatsoever. In the event of any Loss or Damage, Mortgagor shall, at the option of Lender, repair the affected Property to its previous condition or pay or cause to be paid to Lender the decrease in the fair market value of the affected Property.

10. **INSURANCE.** The Property will be kept insured for its full insurable value (replacement cost) against all hazards including loss or damage caused by flood, earthquake, tornado and fire, theft or other casualty to the extent required by Lender. Mortgagor may obtain insurance on the Property from such companies as are acceptable to Lender in its sole discretion. The insurance policies shall require the insurance company to provide Lender with at least 30 days' written notice before such policies are altered or cancelled in any manner. The insurance policies shall name Lender as a loss payee and provide that no act or omission of Mortgagor or any other person shall affect the right of Lender to be paid the insurance proceeds pertaining to the loss or damage of the Property. In the event Mortgagor fails to acquire or maintain insurance, Lender (after providing notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Property and the insurance cost shall be an advance payable and bearing interest as described in Paragraph 21 and secured hereby. Mortgagor shall furnish Lender with evidence of insurance indicating the required coverage. Lender may act as attorney-in-fact for Mortgagor in making and settling claims under insurance policies, cancelling any policy or endorsing Mortgagor's name on any draft or negotiable instrument drawn by any insurer. All such insurance policies shall be immediately assigned, pledged and delivered to Lender as further security for the Obligations. In the event of loss, Mortgagor shall immediately give Lender written notice and Lender is authorized to make proof of loss. Each insurance company is directed to make payments directly to Lender instead of to Lender and Mortgagor. Lender shall have the right, at its sole option, to apply such monies toward the Obligations or toward the cost of rebuilding and restoring the Property. Any amounts may at Lender's option be applied in the inverse order of the due dates thereof.

11. **ZONING AND PRIVATE COVENANTS.** Mortgagor shall not initiate or consent to any change in the zoning provisions or private covenants affecting the use of the Property without Lender's prior written consent. If Mortgagor's use of the Property is or becomes a nonconforming use under any zoning provision, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Mortgagor will immediately provide Lender with written notice of any proposed changes to the zoning provisions or private covenants affecting the Property.

12. **CONDEMNATION.** Mortgagor shall immediately provide Lender with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Property. All monies payable to Mortgagor from such condemnation or taking are hereby assigned to Lender and shall be applied first to the payment of Lender's expenses and other costs (including appraisal fees) in connection with the condemnation or eminent domain proceedings and then, at the option of Lender, to the payment of the Obligations or the restoration or repair of the Property.

13. **LENDER'S RIGHT TO COMMENCE OR DEFEND LEGAL ACTIONS.** Mortgagor shall immediately provide Lender with written notice of any actual or threatened action, suit, or other proceeding affecting the Property. Mortgagor hereby appoints Lender as its attorney-in-fact to commence, intervene in, and defend such actions, suits, or other legal proceedings and to compromise or settle any claim or controversy pertaining thereto. Lender shall not be liable to Mortgagor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Nothing contained herein will prevent Lender from taking the actions described in this paragraph in its own name.

14. **INDEMNIFICATION.** Lender shall not assume or be responsible for the performance of any of Mortgagor's obligations with respect to the Property under any circumstances. Mortgagor shall immediately provide Lender with written notice of and indemnify and hold Lender and its shareholders, directors, officers, employees and agents harmless from all claims, damages, liabilities, causes of action, actions, suits and other legal proceedings (cumulatively "Claims") pertaining to the Property (including, but not limited to, those involving Hazardous Materials). Mortgagor's obligation to indemnify Lender under this paragraph shall survive the termination, release or foreclosure of this Mortgage.

15. **TAXES AND ASSESSMENTS.** Mortgagor shall pay all taxes and assessments relating to the Property when due and immediately provide Lender evidence of payment of same. Upon the request of Lender, Mortgagor shall deposit with Lender each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Property. So long as there is no default, these amounts shall be applied to the payment of taxes, assessments and insurance as required on the Property. In the event of default, Lender shall have the right, at its sole option, to apply the funds so held to pay any taxes or against the Obligations. Any funds applied may, at Lender's option, be applied in reverse order of the due date thereof.

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16. **INSPECTION OF PROPERTY, BOOKS, RECORDS AND REPORTS.** Mortgagor shall allow Lender or its agents to examine and inspect the Property and examine, inspect and make copies of Mortgagor's books and records pertaining to the Property from time to time. Mortgagor shall provide any assistance required by Lender for these purposes. All of the signatures and information contained in Mortgagor's books and records shall be genuine, true, accurate and complete in all respects. Mortgagor shall note the existence of Lender's beneficial interest in its books and records pertaining to the Property. Additionally, Mortgagor shall report, in a form satisfactory to Lender, such information as Lender may request regarding Mortgagor's financial condition or the Property. The information shall be for such periods, shall reflect Mortgagor's records at such time, and shall be rendered with such frequency as Lender may designate. All information furnished by Mortgagor to Lender shall be true, accurate and complete in all respects, and signed by Mortgagor if Lender requests.

17. **ESTOPPEL CERTIFICATES.** Within ten (10) days after any request by Lender, Mortgagor shall deliver to Lender, or any intended transferee of Lender's rights with respect to the Obligations, a signed and acknowledged statement specifying: (a) the outstanding balance on the Obligations; and (b) whether Mortgagor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature of such claims, defenses, set-offs or counterclaims. Mortgagor will be conclusively bound by any representation that Lender may make to the intended transferee with respect to these matters in the event that Mortgagor fails to provide the requested statement in a timely manner.

18. **EVENTS OF DEFAULT.** An Event of Default will occur under this Mortgage in the event that Mortgagor, Borrower or any guarantor of the Obligation:

- (a) fails to pay any Obligation to Lender when due;
- (b) fails to perform any Obligation or breaches any warranty or covenant to Lender contained in this Mortgage or any other present or future agreement;
- (c) destroys, loses or damages the Property in any material respect or subjects the Property to seizure, confiscation, or condemnation;
- (d) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Lender or any individual guarantor dies;
- (e) dies, becomes legally incompetent, is dissolved or terminated, becomes insolvent, makes an assignment for the benefit of creditors, fails to pay debts as they become due, files a petition under the federal bankruptcy laws, has an involuntary petition in bankruptcy filed in which Mortgagor, Borrower or any guarantor is named, or has property taken under any writ or process of court;
- (f) allows goods to be used, transported or stored on the Property, the possession, transportation, or use of which, is illegal;
- (g) allows any party other than Mortgagor or Borrower to assume or undertake any Obligation without the written consent of Lender; or
- (h) causes Lender to deem itself insecure due to a significant decline in the value of the Property; or if Lender, in good faith, believes for any reason that the prospect of payment or performance is impaired.

19. **RIGHTS OF LENDER ON EVENT OF DEFAULT.** Upon the occurrence of an Event of Default under this Mortgage, Lender shall be entitled to exercise one or more of the following remedies without notice or demand (except as required by law):

- (a) to declare the Obligations immediately due and payable in full, such acceleration shall be automatic and immediate if the Event of Default is a filing under the Bankruptcy Code;
- (b) to collect the outstanding Obligations with or without resorting to judicial process;
- (c) to require Mortgagor to deliver and make available to Lender any personal property or Chattels constituting the Property at a place reasonably convenient to Mortgagor and Lender;
- (d) to enter upon and take possession of the Property without applying for or obtaining the appointment of a receiver and, at Lender's option, to appoint a receiver without bond, without first bringing suit on the Obligations and without otherwise meeting any statutory conditions regarding receivers, it being intended that Lender shall have this contractual right to appoint a receiver;
- (e) to employ a managing agent of the Property and let the same, in the name of Lender or in the name of Mortgagor, and receive the rents, incomes, issues and profits of the Property and apply the same, after payment of all necessary charges and expenses, on account of the Obligations;
- (f) to pay any sums in any form or manner deemed expedient by Lender to protect the security of this Mortgage or to cure any default other than payment of interest or principal on the Obligations;
- (g) to foreclose this Mortgage;
- (h) to set-off Mortgagor's Obligations against any amounts owed Mortgagor by Lender including, but not limited to, monies, instruments, and deposit accounts maintained with Lender or any currently existing or future affiliate of Lender; and
- (i) to exercise all other rights available to Lender under any other written agreement or applicable law.

Lender's rights are cumulative and may be exercised together, separately, and in any order. In the event that Lender institutes an action seeking the recovery of any of the Property by way of a prejudgment remedy in an action against Mortgagor, Mortgagor waives the posting of any bond which might otherwise be required. Lender or Lender's designee may purchase the Property at any sale. The Property or any part thereof may be sold in one parcel, or in such parcels, manner or order as Lender in its sole discretion may elect, and one or more exercises of the power herein granted shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations are paid in full.

20. **SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE.** This Mortgage shall be considered a financing statement and a fixture filing pursuant to the provisions of the Uniform Commercial Code (as adopted by the state where the real property is located) covering fixtures, chattels, and articles of personal property now owned or hereafter attached to or to be used in connection with the Property together with any and all replacements thereof and additions thereto (the "Chattels"), and Mortgagor hereby grants Lender a security interest in such Chattels. The debtor is the Mortgagor described above. The secured party is the Lender described above. Upon demand, Mortgagor shall make, execute and deliver such security agreements (as such term is defined in said Uniform Commercial Code) as Lender at any time may deem necessary or proper or require to grant to Lender a perfected security interest in the Chattels, and upon Mortgagor's failure to do so, Lender is authorized to sign any such agreement as the agent of Mortgagor. Mortgagor hereby authorizes Lender to file financing statements (as such term is defined in said Uniform Commercial Code) with respect to the Chattels, at any time, without the signature of Mortgagor. Mortgagor will, however, at any time upon request of Lender, sign such financing statements. Mortgagor will pay all filing fees for the filing of such financing statements and for the refiling thereof at the times required, in the opinion of Lender, by said Uniform Commercial Code. If the lien of this Mortgage be subject to any security agreement covering the Chattels, then in the event of any default under this Mortgage, all the right, title and interest of Mortgagor in and to any and all of the Chattels is hereby assigned to Lender, together with the benefit of any deposits or payments now or hereafter made thereof by Mortgagor or the predecessors or successors in title of Mortgagor in the Property.

21. **REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER.** Lender, at Lender's option, may expend funds to perform any act required to be taken by Mortgagor or to exercise any right or remedy of Lender under this Mortgage. Upon demand, Mortgagor shall immediately reimburse Lender for all such amounts expended by Lender together with interest thereon at the lower of the highest rate described in any Obligation or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be included in the definition of Obligations herein and shall be secured by the beneficial interest granted herein. If the Obligations are paid after the beginning of publication of notice of sale, as herein provided, or in the event Lender shall, at its sole option, permit Mortgagor to pay any part of the Obligations after the beginning of publication of notice of sale, as herein provided, then, Mortgagor shall pay on demand all expenses incurred by the Lender in connection with said publication, and this Mortgage shall be security for all such expenses and fees.

22. **APPLICATION OF PAYMENTS.** All payments made by or on behalf of Mortgagor may be applied against the amounts paid by Lender in connection with the exercise of its rights or remedies described in this Mortgage and then to the payment of the remaining Obligations in whatever order Lender chooses.

23. **SHORT TERM MORTGAGE ACT.** The parties agree that the provisions of the Short Term Mortgage Redemption Act shall govern the Mortgage.

24. **SUBROGATION OF LENDER.** Lender shall be subrogated to the rights of the holder of any previous lien, security interest or encumbrance discharged with funds advanced by Lender regardless of whether these liens, security interests or other encumbrances have been released of record.

25. The promissory note secured by this Mortgage may be the basis for a personal action against the Borrower(s), in addition to other remedies allowed by law.

26. **PARTIAL RELEASE.** Lender may release its interest in a portion of the Property by executing and recording one or more partial releases without affecting its interest in the remaining portion of the Property. Nothing herein shall be deemed to obligate Lender to release any of its interest in the Property (except as required under Paragraph 34), nor shall Lender be obligated to release any part of the Property if Mortgagor is in default under this Mortgage.

27. **MODIFICATION AND WAIVER.** The modification or waiver of any of Mortgagor's Obligations or Lender's rights under this Mortgage must be contained in a writing signed by Lender. Lender may perform any of Borrower's or Mortgagor's Obligations, delay or fail to exercise any of its rights or accept payments from Mortgagor or anyone other than Mortgagor without causing a waiver of those Obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Mortgagor's Obligations under this Mortgage shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Mortgagor, Borrower or third party or any of its rights against any Mortgagor, Borrower or third party or any of the Property. Lender's failure to insist upon strict performance of any of the Obligations shall not be deemed a waiver and Lender shall have the right at any time thereafter to insist upon strict performance.

28. **SUCCESSORS AND ASSIGNS.** This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees and devisees.

29. **NOTICES.** Except as otherwise required by law, any notice or other communication to be provided under this Mortgage shall be in writing and sent to the parties at the addresses described in this Mortgage or such other address as the parties may designate in writing from time to time. Any such notice so given and sent by first class mail, postage prepaid, shall be deemed given the earlier of three (3) days after such notice is sent or when received by the person to whom such notice is being given.

30. **SEVERABILITY.** Whenever possible, each provision of this Mortgage shall be interpreted so as to be effective and valid under applicable state law. If any provision of this Mortgage violates the law or is unenforceable, the rest of this Mortgage shall continue to be valid and enforceable.

31. **APPLICABLE LAW.** This Mortgage shall be governed by the laws of the state where the real property is located. Unless applicable law provides otherwise, Mortgagor consents to the jurisdiction and venue of any court selected by Lender, in its sole discretion, located in that state.

32. **NO THIRD PARTY RIGHTS.** No person is or shall be a third party beneficiary of any provision of the Mortgage. All provisions of the Mortgage in favor of Lender are intended solely for the benefit of Lender, and no third party shall be entitled to assume or expect that Lender will waive or consent to the modification of any provision of the Mortgage, in Lender's sole discretion.

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33. **PRESERVATION OF LIABILITY AND PRIORITY.** Without affecting the liability of Borrower, Mortgagor, or any guarantor of the Obligations, or any other person (except a person expressly released in writing) for the payment and performance of the Obligations, and without affecting the rights of Lender with respect to any Property not expressly released in writing, and without impairing in any way the priority of this Mortgage over the interest of any person acquired or first evidenced by recording subsequent to the recording of this Mortgage, Lender may, either before or after the maturity of the Obligations, and without notice or consent: release any person liable for payment or performance of all or any part of the Obligations; make any agreement altering the terms of payment or performance of all or any part of the Obligations; exercise or refrain from exercising or waive any right or remedy that Lender may have under this Mortgage; accept additional security of any kind for any of the Obligations; or release or otherwise deal with any real or personal property securing the Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property shall be deemed, by acquiring such interest or recording any evidence thereof, to have consented to all or any such actions by Lender.

34. **DEFEASANCE.** Upon the payment and performance in full of all of the Obligations, Lender will execute and deliver to Mortgagor those documents that may be required to release this Mortgage of record. Mortgagor shall be responsible to pay any costs of recordation.

35. **CONSTRUCTION LOAN.** This Mortgage is a construction mortgage under the Uniform Commercial Code to secure an obligation incurred for the construction of an improvement on land, including the acquisition costs of land. This Mortgage secures a construction loan, and it will be subject to the terms of a construction loan agreement between Mortgagor and Lender. Any materials, equipment or supplies used or intended for use in the construction, development, or operation of the Property, whether stored on or off the Property, shall also be subject to the lien of this Mortgage.

36. **WAIVER OF HOMESTEAD.** Mortgagor hereby waives all homestead exemptions in the Property to which Mortgagor would otherwise be entitled under any applicable law.

37. **DEFICIENCY JUDGMENT.** Lender has the right to proceed to obtain and collect a deficiency judgment against the parties personally liable, together with foreclosure of the real property mortgaged, under applicable law.

38. **REQUEST FOR INFORMATION.** Upon receipt of a written request, from the owner of the real property or the owner's personal representative, for information about this Mortgage including, but not limited to, the payoff amount, escrow account balance or the amounts due under the Mortgage, Lender shall have thirty (30) days, from receipt of the request, within which to provide the requestor with the information.

39. **MISCELLANEOUS.** Mortgagor and Lender agree that time is of the essence. Mortgagor waives presentment, demand for payment, notice of dishonor and protest except as required by law. All references to Mortgagor in this Mortgage shall include all persons signing below. If there is more than one Mortgagor, their Obligations shall be joint and several. This Mortgage represents the complete integrated understanding between Mortgagor and Lender pertaining to the terms and conditions hereof.

40. **ADDITIONAL TERMS:**

Mortgagor acknowledges that Mortgagor has read, understands, and agrees to the terms and conditions of this Mortgage, and acknowledges receipt of an exact copy of same.

Dated this 22nd day of February, 1999

MORTGAGOR:

Jerome Sempenderfer

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

Judith K Sempenderfer

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

WAIVER OF HOMESTEAD. I understand that homestead property is, in many cases, protected from the claims of creditors and exempt from judicial sale and that, by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

Dated this _____ day of _____



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McLean Co., ND

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ACKNOWLEDGMENTS

State of North Dakota)
County of McLean) ss.



The foregoing instrument was acknowledged before me this 22nd day of February, 1999,
by Terrence J. Sumpfwerfer and Judith K. Sumpfwerfer

Carla J. Feist
Notary Public
My Commission Expires: CARLA J. FEIST
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 19, 2002

State of _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____,
by _____ of _____,
a _____ corporation, on behalf of the corporation.
(SEAL)

Notary Public
My Commission Expires: _____

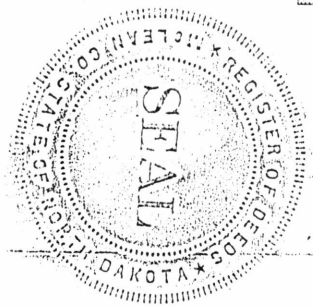
SCHEDULE A

The following described real property located in the County of McLean, State of North Dakota
Covering the following described premises situated in the County of McLean, State
of North Dakota, to-wit:

Lot Nine (9) in Block One (1), of Renner's First Addition to teh City of Washburn,
North Dakota.

SCHEDULE B

- RECEPTION _____
- INDEXED 1
- CHECKED _____
- COPIED 1
- VERIFIED _____
- MICROFILM _____



REGISTER OF DEEDS OFFICE, MCLEAN COUNTY, ND 03/01/1999 09:55AM
I certify that this instrument was filed for record this date.
Dwayne J. Oster, Register of Deeds
3335667


3335667
Page: 5 of 5
GATE CITY FEDERAL MTC 19.00 03/01/1999 09:55A
McLean Co., ND

SCHEDULE C

THIS DOCUMENT WAS PREPARED BY: Gate City Federal Savings Bank

AFTER RECORDING RETURN TO LENDER AT ITS ADDRESS DESCRIBED ABOVE.