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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
4/6/2005 14:20:43.04



2005038486

-SPACE ABOVE RESERVED FOR RECORDER'S USE-

DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

Loan No. 3700675468

THIS DEED OF TRUST ("Instrument") is made this 31st day of March, 2005, by COMFED-DODGE FUND VII, A NEBRASKA LIMITED PARTNERSHIP ("Borrower"), to COMMERCIAL FEDERAL BANK ("Trustee"), whose address is 13220 California Street, Omaha, Nebraska 68154, for the benefit of COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK, as beneficiary ("Lender"), whose address is 13220 California Street, Omaha, Nebraska 68154.

WITNESSETH:

Borrower, as trustor, irrevocably grants, conveys, transfers, and assigns to Trustee, in trust, with power of sale, that real property in Douglas County, Nebraska, described as on Exhibit "A" attached hereto and incorporated herein by reference.

TOGETHER with all interest which Borrower now has or may hereafter acquire in or to said property and in and to: (a) all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said property; and (b) all buildings, structures, tenements, improvements, fixtures, and appurtenances now or hereafter placed thereon and owned by Borrower, including, but not limited to, all fixtures, apparatus, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with said property, including, but not limited to, those for the purposes of supplying or distributing air cooling, air conditioning, gas, electricity, water, air, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal and other services; and all related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, cabinets, paneling, attached floor coverings, furniture, and pictures, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (c) all cabinets, shelving, furniture, displays, lights, machinery and other trade fixtures attached or otherwise installed on said property used for a trade or business, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (d) all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Borrower and shares of stock pertaining to such water or water rights, ownership of which affects said property; and (e) the rents, income, issues, and profits of all properties covered by this Instrument; SUBJECT, HOWEVER, to the terms and conditions herein set forth. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to evidence or confirm the lien of this Instrument on any such properties. The properties conveyed to Trustee hereunder are hereinafter referred to as the "Property."

FOR THE PURPOSE OF SECURING:

MTG 103.00 59-25020 - Replat.
59-25000 - Endplotting
F $\frac{20}{6}$ BKP _____ 0.0 _____
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(1) Payment of the sum of Seven Million Six Hundred Thousand Dollars (\$7,600,000.00), with interest thereon, according to the terms of a Promissory Note of even date herewith and having a final maturity date of April 1, 2011, made by Borrower payable to Lender or to order, and all modifications, extensions or renewals thereof, together with any future advances made by Lender (the "Note").

(2) Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Lender pursuant to this Instrument (herein "Future Advances"); and (b) as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Trustee or Lender under any provision of this Instrument.

(3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Borrower relating to the loan secured hereby (together with the Note and this Instrument are referred to as the "Loan Documents").

(4) At Lender's option, payment with interest thereon, of any other present or future indebtedness or obligation of Borrower (or of any successor in interest of Borrower to such Property) owing to Lender, whether created directly or acquired by absolute or contingent assignment, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Instrument or arising thereafter, the exercise of such option to be evidenced by a notice in writing to Borrower or any successor in interest to Borrower.

(5) Performance of all agreements of Borrower to pay fees and charges to the Lender relating to the Loan secured hereby.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, convey, transfer and assign the Property to the Trustee and that Borrower will warrant and defend generally the title to the Property against all claims and demands, except for liens, easements and restrictions which are shown as prior to the lien created by this Instrument in a schedule of exceptions to coverage in any title policy insuring Lender's lien on the Property created by this Instrument.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER COVENANTS AND AGREES AS FOLLOWS:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Unless waived in writing by Lender Borrower shall pay to Lender on the day monthly installments of principal and/or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly taxes and assessments which may be levied on the Property, (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to this Instrument, and (c) if this Instrument is on a leasehold, the yearly or periodic rents under the ground lease, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such sums for other taxes, charges, premiums, assessments and impositions relating to Borrower or the Property, payment of which Lender reasonably shall deem necessary to protect any of the liens or security interests of Lender covered by this Instrument ("Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid to Lender by Borrower in a lump sum or in periodic installments, at Lender's option.

The Funds shall be held by Lender or, at Lender's option, in another institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and Other Impositions as they become due provided that Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless Lender

pays Borrower interest, earnings or profits on the Funds and applicable law permits Lender to make such a charge. Unless applicable law requires payment of interest, earnings or profits on the Funds to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, in Lender's usual format, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are hereby pledged as additional security for the indebtedness secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of taxes, assessments, insurance premiums, and Other Impositions, as they fall due, such excess may be refunded to Borrower following such audit or may be applied by Lender at its option to payments due in the future. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay taxes, assessments, insurance premiums, and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after written notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine, in Lender's sole discretion, any Funds held by Lender at the time of application (a) to pay taxes, assessments, insurance premiums and Other Impositions which then are due, or (b) as a credit against any indebtedness secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any unapplied Funds held by Lender.

Lender hereby agrees to waive its right to require payment of the Funds so long as Borrower does not default under the Note, this Instrument, or any other instrument securing the Note or other Loan Documents provided that Borrower provides Lender with timely evidence satisfactory to Lender that all taxes, assessments, premiums and, if requested by Lender, Other Impositions have been paid in full prior to delinquency. If such a default occurs or if Borrower does not provide such evidence, Lender may revoke its waiver at any time thereafter by giving written notice thereof to Borrower.

3. **APPLICATION OF PAYMENTS.** Unless applicable law requires otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the order of priority as determined by Lender in its discretion.

4. **CHARGES; LIENS.** Borrower shall pay all taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under Paragraph 2 hereof or, if not paid in such manner due to a waiver by Lender, by Borrower making payment, when due, directly to the appropriate payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph and, in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written consent, which may be withheld in Lender's sole and absolute discretion (unless specifically provided to the contrary in this Instrument), Borrower will not permit or allow any lien inferior to this Instrument to be perfected against the Property.

5. **HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage," rent loss for not less than one year's gross income from the Property, and such other hazards, casualties, liabilities and contingencies as Lender shall require, including, among other things, flood, tornado or similar environmental damage, and in such amounts and for such periods as Lender shall require, but in any event not less than an amount which will comply with any coinsurance clause and not less than the greater of (i) the principal balance of the Note, or (ii) one hundred percent (100%) of the actual cash replacement value of the improvements (both fixtures and personalty). All premiums on insurance policies shall be paid in the manner provided under Paragraph 2 hereof, or by Borrower making payment when due directly to the carrier if Lender has waived its escrow requirement, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee loss payable clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least (30) thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

During the course of any construction or restoration of the improvements the following coverages shall also be required: comprehensive public liability insurance in at least the amount required by Lender (including coverage for elevators and escalators, if any) on an "occurrence basis" against claims for personal injury including, without limitation, bodily injury, death, or property damage occurring on, in, or about the Property and the adjoining streets, sidewalks, and passageways, such insurance to afford immediate minimum protection to a limit satisfactory to Lender with respect to personal injury or death to any one or more persons or damage to property; worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Borrower engaged on or with respect to the Property in such amount as is satisfactory to Lender, or, if such amounts are established by law, in such amounts; builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of the improvements, in non-reporting form, covering the total value of work performed and equipment, supplies, and materials furnished; and such other coverages that Lender may require.

In the event of any loss covered by any insurance policies, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender (at Lender's option) as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder. All insurance proceeds shall be paid by the insurance company to Lender to be held and disbursed in accordance with this Paragraph 5. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property, or (b) if the proceeds are insufficient to repair or reconstruct the improvements in the manner required in the next subparagraph, and if Borrower is unable or unwilling to personally fund the shortfall, to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, or (c) if a default exists under this Instrument or any of the Loan Documents, Lender shall be entitled to retain the proceeds and apply the same in the order as provided in Paragraph 3.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificate, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in Paragraphs 1 and 2 hereof, but Lender shall redetermine the amounts of such installments. If the Property is sold pursuant to the terms of this Instrument or if Lender acquires title to the Property, Lender thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to any insurance proceeds resulting from or which may be payable as a consequence of any damage to the Property prior to such sale or acquisition.

6. **PRESERVATION AND MAINTENANCE OF PROPERTY.** Borrower (a) shall not commit waste or permit any physical deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances therein, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all laws, ordinances, regulations and requirements

of any governmental body applicable to the Property; (f) at Lender's option shall provide for professional management of the Property by a rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing; (g) shall generally operate and maintain the Property in a manner to maximize rentals and income; and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

7. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent. Borrower shall not violate nor shall Borrower permit or authorize the breach or violation of the terms of any easements, covenants, or restrictions of record upon or affecting the Property. Borrower will not conduct, permit, or authorize the generation, storage, treatment, or disposal of any friable asbestos, hazardous waste, or toxic substance on or in a location that will adversely affect the Property and shall promptly provide Lender written notice of (a) its obtaining knowledge of any release of any hazardous or toxic material or oil at or from the Property or any other site owned, occupied, or operated by Borrower or by any person for whose conduct Borrower is responsible or whose liability may result in a lien on the Property; (b) Borrower's receipt of any notice to such effect from any federal, state, or other governmental authority; and (c) loss by such governmental authority in connection with the assessment, containment, or removal of any hazardous or toxic material or oil for which expense or loss Borrower may be liable or for which expense a lien may be imposed on the Property. "Borrower," as that term is used herein, includes Borrower's successors, assigns, agents, servants, employees, and owners.

8. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (a) disbursement of attorneys' fees, (b) entry upon the Property to make repairs or otherwise to protect the same as security for the indebtedness secured by this Instrument, and (c) procurement of satisfactory insurance as provided in this Instrument.

Any amounts disbursed by Lender pursuant to this paragraph shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate as provided in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by any advances made by Lender hereunder. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

9. **INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property at any time at Lender's option. Lender may at its option at any time, require Borrower, or Lender may arrange, all at the sole cost and expense of Borrower, to employ or for the employment of an independent and qualified environmental engineer and inspector, acceptable to Lender, to determine if there is any asbestos, petroleum, radon or hazardous material or substance above, in, on, under or from the Property. Such cost and expense shall, if not paid by Borrower, become additional indebtedness secured by this Instrument. The failure of Borrower to promptly pay the cost and expense of the same or to cooperate with and permit such inspection shall constitute a default under this Instrument and the other Loan Documents.

10. **BOOKS AND RECORDS.** Borrower shall keep and maintain at all times at Borrower's address stated herein, or such other place as Lender may approve in writing, complete and accurate books of account and records, in accordance with generally accepted accounting principles, consistently applied, adequate to reflect

correctly the results of the operation of the Property, and copies of, leases shall be subject to examination at any reasonable time by Lender. Within fifteen (15) days after Lender's request, Borrower shall furnish to Lender a balance sheet, a statement of income and expenses of the Property, each in reasonable detail and certified by Borrower and, if Lender shall require (but not more than once each calendar year), by an independent certified public accountant. Borrower shall furnish, within three (3) days from Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant and, for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid. In addition to the foregoing, Borrower shall furnish to Lender automatically and without the need for request, within one hundred twenty (120) days following the close of Borrower's fiscal year, a statement of income and expenses with respect to the Property for the prior fiscal year, a current rent roll, current financial statements of Borrower and Borrower's most recent federal tax return, all certified as true and correct. Borrower to provide quarterly a list of renovations to the property. Excess cash flow from 25 year amortization to be used for renovations and not for distributions to partners. All financial statements and other documents or records pursuant to this paragraph shall be provided at Borrower's sole expense.

11. **CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect or whether by eminent domain or otherwise, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any such condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraphs 1 and 2 hereof but shall only change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

12. **BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release any other persons secondarily or otherwise liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, or agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien, or priority of lien, hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and reasonable attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. **FORBEARANCE BY LENDER NOT A WAIVER.** No waiver by Lender of any right under this Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Instrument or of any provision of this Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does

not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

14. **ESTOPPEL CERTIFICATE.** Borrower shall, within ten (10) days following a written request from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of setoff, counterclaim or other defense which Borrower believes exists against such sums or the obligations of this Instrument.

15. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the appropriate records or index for Uniform Commercial Code filings as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided elsewhere in this Instrument.

16. **LEASES OF THE PROPERTY.** Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the terms as specified in an Assignment of Leases and Rents executed by Borrower on an even date herewith. Unless otherwise waived by Lender, all future leases of the Property shall specifically provide that such leases: (a) are subordinate to this Instrument; (b) that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; (c) that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; and (d) that the attornment of the tenant shall not be terminated by foreclosure. Borrower shall not modify, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument except as permitted in the Assignment of Leases and Rents. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of setoff against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a setoff against rent, (ii) notify Lender thereof and of the amount of said setoff, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to setoff or take such other steps as shall effectively discharge such setoff and as shall assure that rents thereafter due shall continue to be payable without setoff or deduction.

17. **ASSIGNMENT OF RENTS AND REVENUES; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As part of the consideration for the loan evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, as provided in a separate Assignment of Leases and Rents executed by Borrower on an even date herewith; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, which default is not cured within any

applicable cure period, Borrower shall have a revocable license to collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in Paragraph 3 hereof, with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents and revenues constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph as the same become due and payable, including but not limited to rents and revenues then due and unpaid, and all such rents and revenues shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents and revenues. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant or user of the Property shall make such rents and revenues payable to and pay such rents and revenues to Lender or Lender's agents on Lender's written demand therefore, without any liability on the part of said tenant or user to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents or revenues, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents or revenues of the Property for more than one (1) month prior to the due dates of the same. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents or revenues of the Property more than one (1) month prior to the due date of the same. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, which is not cured within any applicable cure period, Lender may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and the conducting thereon of any business or businesses then being conducted by Borrower including, but not limited to, the execution or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property or the conducting of such businesses thereon, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, which is not cured within any applicable cure period, such shall be appointed as provided in Paragraph 20 below. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the cost, if any, of taking control of and managing the Property and collecting the rents and revenues, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property, and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents and revenues actually received.

If the rents and revenues of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the same, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to the terms hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be immediately due and payable by Borrower and shall bear interest from the date of disbursement at the default rate stated under the terms of the Note.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents and revenues as provided herein shall not cure or waive any default hereunder or invalidate any

other right or remedy of Lender under applicable law or provided herein. This assignment of rents and revenues of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

18. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the United States Bankruptcy Code, as such Code may from time to time be amended, or under any similar successor federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower within sixty (60) days from the commencement of such proceedings, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by this Instrument. Furthermore, Lender shall be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, on or against the exercise of the rights and remedies otherwise available to Lender, and Borrower hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief. Any attorneys' fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to the terms hereof.

19. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER.** If Borrower sells, exchanges, conveys, alienates, assigns, disposes of, encumbers, pledges, or transfers all or any portion of the Property (except as hereinafter provided), or if Borrower executes any agreement or contract creating any right to or any equitable interest in the title to the Property or any part thereof, or executes any agreement or contract granting a possessory right in the Property or any part thereof (including, without limiting the generality of the foregoing, outright conveyance, conveyance or alienation by land installment contract or contract for deed, alienation by lease or rental agreement with an option to purchase, and the granting of deeds of trust, mortgages, liens, and security interests subordinate to this Instrument, but excluding leases made in accordance with the Loan Documents) or if all or any part of any ownership interest in Borrower of whatever nature whatsoever is sold, exchanged, conveyed, alienated, assigned, disposed of, encumbered, pledged, or transferred, then at Lender's option the unpaid remainder of the Note and all of the sums secured by this Instrument shall be immediately and automatically due and payable in full, and Lender may invoke any remedies permitted by law and/or this Instrument. The conveyance or transfer of Borrower's interest in the Property or any interest in Borrower as a result of foreclosure of a subordinate lien or a security interest or a transfer by operation of law (except as otherwise provided below) shall constitute a sale or transfer subject to this paragraph. The foregoing acceleration shall not apply in case of:

(i) Transfers by devise or descent or by operation of law upon the death of an individual owning a beneficial interest in Borrower;

(ii) The grant of a leasehold interest in a part of the Property made in accordance with the Loan Documents and not containing an option to purchase; and

(iii) Sales or transfers for fair market consideration of fixtures or any routine personal property used in the operation of the Property, provided that such sales or transfers are incidental to the replacement of like fixtures and personal property of newer and better quality and condition, or such fixtures or personal property are removed in connection with the making of tenant improvements.

Should Borrower request that Lender not exercise the right to accelerate the Note and the other indebtedness secured hereby, Lender may withhold consent in its sole discretion and, if approved, may impose certain conditions as consideration for such agreement not to accelerate, including, without limiting the generality of the foregoing, any or all of the terms as set forth in the Note and Loan Documents. Inasmuch as the loan evidenced by the Note was based in part on the financial and management responsibility and experience of Borrower, it is

specifically understood and agreed that Lender's consent may be given or withheld by Lender in the exercise of its sole discretion, and failure to receive such consent prior to any such transfer or conveyance or attempt thereafter shall be deemed a breach hereof and of the Note. Should Lender forbear from accelerating the payment of the Note and the other indebtedness secured hereby by reason of any of the foregoing, the assignee of Borrower shall be deemed to have assumed and agreed to pay the Note and the other indebtedness secured hereby owing Lender and be bound by the terms hereof, whether or not the instrument evidencing such sale or transfer expressly so provides, and this covenant shall run with the Property and remain in full force and effect until the entire Note and the other indebtedness secured hereby is paid or discharged in full. Upon the occurrence of any of the foregoing events and consent thereto having not been given by Lender, the mere fact of a lapse of time or the acceptance of payments subsequent to any of such events shall not be deemed a waiver of Lender's right to make such election, nor shall Lender be estopped therefrom by virtue thereof. Borrower shall be required to notify Lender upon the occurrence of any of the events affecting title as above-described, and failure to do so shall constitute a default hereunder and under the Note. No sale of the Property, assumption or other event specified above and approved by Lender shall operate to release or affect the original liability of Borrower, either in whole or in part, unless Borrower is expressly released in writing by Lender.

20. **ACCELERATION; REMEDIES.**

(a) **Acceleration and Power of Sale.** Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, which breach is not cured within any applicable cure period, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender, at Lender's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may invoke the power of sale and other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender and Trustee shall execute or cause to be executed a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold or shall comply with such requirements and procedures as required by the law of the State in which this instrument is recorded for foreclosure under a power of sale. Trustee shall sell the Property according to applicable law. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and in accordance with applicable law. Lender or Lender's designee may purchase the property at any sale.

The Trustee shall deliver to the purchaser a Trustee's Deed upon sale conveying the Property so sold without any covenant or warranty, expressed or implied, except as required by applicable law. The recitals in the Trustee's Deed shall be prima facie evidence of the truth of the statements made therein. Except as otherwise required by applicable law, Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorneys' fees actually incurred and costs of title evidence, with Trustee's fees not to exceed five percent (5%) of the original balance of the Note secured by this Instrument; (ii) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; (iii) to the payment of junior trust deeds, mortgages, or other lienholders; and (iv) the excess, if any, to the person or persons legally entitled thereto.

(b) **Foreclosure as Mortgage.** This Instrument shall be effective as a mortgage as well as a deed of trust and may be foreclosed as a deed of trust or a mortgage as to any of the Property in any manner permitted by the laws of the State in which this Instrument is recorded.

(c) **Receiver.** In addition to all other remedies herein provided, Lender shall, as a matter of right, be entitled to an ex parte appointment of a receiver or receivers without notice, notice being hereby expressly waived, for all or any part of the Property without regard to the value of the Property or the solvency of any person or persons liable for the payment of the Note and Borrower does hereby consent to

the appointment of such receiver or receivers, waives any and all defenses to such appointment, and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege it may now have under law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee, or other appointee by virtue of any court order, statute, or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income. Any money advanced by Lender in connection with any such receivership shall be a part of the indebtedness secured hereby and shall be payable by Borrower to Lender as provided in this Instrument. The receiver or its agents shall be entitled to enter upon and take possession of any and all of the Property. The receiver, personally or through its agents or attorneys, may exclude Borrower and its agents, servants, and employees wholly from the Property, and have, hold, use, operate, manage, and control the same and each and every part thereof, and keep insured the properties, equipment, and apparatus provided or required for use in connection with the business or businesses operated on the Property, and make all such useful alterations, additions, betterments, and improvements as the receiver may deem judicious. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured, or until title to the Property shall have passed by foreclosure sale under this Instrument and the period of redemption, if any, shall have expired.

(d) **Waivers.** Except as may be prohibited by applicable law, Borrower hereby expressly waives and releases any and all rights or redemption or periods of redemption in the event of foreclosure of this Instrument. Borrower further expressly waives and releases all rights of exemption of some of the Property or proceeds thereof from attachment, levy or sale on execution, all rights or appraisement or valuation, and all benefits of any homestead exemption.

21. ENVIRONMENTAL MATTERS.

a. **Defined Terms.** As used in this paragraph, the following terms shall have the following meanings:

(1) "Contaminant" means any pollutants, hazardous or toxic substances or wastes or contaminated materials including but not limited to oil and oil products, asbestos, asbestos containing materials, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, flammables, explosives, radioactive materials, laboratory wastes, chemicals, elements, compounds or any other materials and substances (including materials, substances or things which are composed of or which have as constituents any of the foregoing substances), which are or may be subject to regulation under, or the Release of which or exposure to which is prohibited, limited or regulated under any Environmental Law.

(2) "Enforcement Action" means any action, proceeding or investigation (administrative or judicial, civil or criminal) instituted or threatened by U.S. Environmental Protection Agency, or any other federal, state or local governmental agency (collectively "Governmental Authority") related to any alleged or actual violation of any Environmental Law with respect to the Property and/or any business conducted thereon, and/or the Borrower, including, but not limited to, actions seeking Remediation, the imposition or enforcement of liability pursuant to any Environmental Law and compliance with any Environmental Law. Enforcement Action shall also include any similar actual or threatened action by any private party pursuant to any Environmental Law.

(3) "Environmental Laws" means any and all present and future federal, state, and local laws, statutes, ordinances, rules, and regulations, relating to protection of human health and the environment from Contaminants including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (CERCLA), 42 USC § 9601 *et seq.*; the Resource Conservation and Recovery Act, as amended, (RCRA), 42 USC § 6901 *et seq.*; the Clean Air Act, as amended, 42 USC § 7401 *et seq.*; the Federal Water Pollution Control Act, as amended (including but not limited to as amended by the Clean Water Act), 33 USC § 1251 *et seq.*; the Toxic Substances Control Act, as amended (TSCA), 15 USC § 2601 *et seq.*; the

Emergency Planning and Community Right-to-Know Act (also known as SARA Title III), as amended, (EPCRA), 42 USC § 11001 *et seq.*; the Safe Drinking Water Act, as amended, 42 USC § 300(f) *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), 7 USC § 136 *et seq.*; the Occupational Safety and Health Act, as amended, (OSHA), 29 USC § 651 *et seq.*; the Endangered Species Act, as amended, 16 USC § 1531 *et seq.*; the National Environmental Policy Act, as amended, (NEPA), 42 USC § 4321 *et seq.*; the Rivers and Harbors Act of 1899, 33 USC § 401 *et seq.*; state and local laws, rules and regulations similar to or addressing similar matters as the foregoing federal laws; laws, rules and regulations governing underground or above-ground storage tanks; laws, rules and regulations imposing liens for response costs or costs of other Remediation, whether or not those liens have a higher priority than existing liens; laws, rules and regulations conditioning transfer of property upon a form of negative declaration or other approval of a Governmental Authority of the environmental condition of a property; laws, rules and regulations requiring the disclosure of conditions relating to Contaminants in connection with transfer of title to or interest in property law; laws, rules and regulations requiring notifying of any governmental entity with regard to a Release of any Contaminant; conditions or requirements imposed in connection with any permits; government orders and demands and judicial orders pursuant to any of the foregoing; laws, rules and regulations relating to the Release, use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management, or handling of Contaminants; any and all other laws, rules, regulations, guidance, guidelines and common law of any governmental entity relating to the protection of human health or the environment from Contaminants.

(4) "Release" means any spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Contaminant.

(5) "Remediation" means any response, remedial or removal action pursuant to CERCLA; any corrective action pursuant to RCRA; any other actions required, authorized or ordered under any Environmental Law with regard to cleanup, removal, response, detoxification or other remediation of any Contaminant; any actions to prevent, cure or mitigate a Release or threatened Release of any Contaminant; any action necessary or appropriate to comply with any Environmental Law; any action necessary or appropriate to obtain or comply with permits needed for operations in connection with the Property; including but not limited to: any investigation, monitoring, assessment, testing, sampling, laboratory or other analysis, or evaluation, relating to any such response, remedial, removal, corrective or other cleanup action or relating to any Release or threatened Release of any Contaminant; other actions ordered or otherwise required pursuant to any other provision of any other Environmental Law; any other response, remedial or removal action liability for which may be imposed pursuant to CERCLA § 107(a) (42 USC § 9607(a)) whether such liability is to a Governmental Authority or a private party.

b. **Environmental Indemnity.** Borrower agrees to defend, indemnify, protect, release and hold harmless Lender (whether as Beneficiary, Mortgagee in Possession, as a successor in interest to Borrower by virtue of foreclosure of this Instrument or otherwise, as owner or operator of the Property or in any other capacity), its affiliates, subsidiaries, parties to whom Lender sells loan participations (if applicable), the successors and assigns of each and its and their directors, officers, employees, and agents (collectively, the "Lender Parties" or singularly a "Lender Party") from and against any and all claims, suits, liabilities, actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, liabilities (including strict liabilities), fines, penalties, charges, fees, attorneys' fees and costs, engineers' fees, environmental consultants' fees and investigation costs, costs of Remediation (whether or not performed voluntarily), and any other expenses (including expenses incurred in enforcing this indemnity), judgments, awards, amounts paid in settlement, punitive damages, and foreseeable and unforeseeable consequential damages (collectively, "Losses") incurred by or threatened against Lender or a Lender Party arising directly or indirectly out of, or any way related to:

(1) The past, present or future violations of any Environmental Law in connection with the Property or operations thereon, including but not limited to any failure by Borrower or any tenant or other users of the Property to comply with any Enforcement Action or any Environmental Law;

(2) Any actions necessary or appropriate to comply with any Environmental Law in any way connected with the Property;

(3) The presence of any Contaminant in, on or under the Property including, but not limited to the use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management or handling of Contaminants in any way connected with the Property;

(4) The past, present or threatened Release of any Contaminants in, on, under or from the Property, or migrating to the Property, including but not limited to costs of Remediation of Contamination on properties to which such Contaminants may have migrated;

(5) Any Remediation or Enforcement Action in any way connected with the Property;

(6) Any breach of the Borrower's covenants or any breach or misrepresentation of Borrower's representations and warranties in this Instrument or other Loan Documents;

(7) Any loss of priority of Lender's title (or lien on) the Property directly or indirectly arising out of or in any way relating to any of the foregoing or any imposition of any lien or other encumbrance on title to the Property or indirectly arising out of or in any way relating to any of the foregoing;

(8) Any personal injury, wrongful death, or property damage arising under any statutory or common law tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance on or for the conducting an abnormally dangerous activity on the Property.

(9) Any other matter relating to any environmental condition of the Property, to Contaminants in connection with the Property or migrating to or from the Property, or to any Environmental Laws.

Borrower understands, acknowledges and agrees that its liabilities to Lender pursuant to this indemnity shall be binding upon Borrower regardless of whether conditions described in this paragraph resulted from acts or omissions of Borrower, its predecessors in interest, or any other person or from circumstances (whether or not on the Property) which occurred or existed prior to the date hereof. Borrower's liability hereunder shall not be limited in any respect by the terms of any paragraph of the Note limiting Borrower's personal liability, and shall survive and continue beyond foreclosure of this Instrument, deed in lieu of foreclosure and payoff or discharge of the Note and release of this Instrument and the other Loan Documents for environmental conditions that existed or occurred prior to completion of foreclosure, deed in lieu of foreclosure or release of this Instrument.

c. **Covenants, Representations and Warranties.** Borrower covenants, represents and warrants to Lender that:

(1) To the best of Borrower's knowledge and belief, after due inquiry and investigation, the Property is free of any Contaminants and neither Borrower nor any other person (including but not limited to prior owners, occupiers and tenants) has ever caused or permitted any Contaminant to be manufactured, placed, generated, stored, held, transferred, processed, produced, transported or disposed on, at, through or under the Property nor any property adjacent thereto has even been used (whether by Borrower or, to the best knowledge of Borrower, by any other person)

as a location for the manufacture, placement, storage, location or disposal of any Contaminants, other than ordinary cleaning solvents and lawn chemicals stored or used in ordinary quantities for routine management of the Property.

(2) Neither Borrower nor, to the best of Borrower's knowledge and belief, any other person (including but not limited to prior owners, occupiers and tenants) has ever caused or permitted any Contaminant to be manufactured, placed, stored, located or disposed of on, under or at any other real property owned, occupied (under leases or licenses or otherwise) or operated by Borrower, except in compliance with applicable Environmental Laws.

(3) No lien has or is currently attached to any revenues or any real or personal property owned by Borrower (including but not limited to the Property) as a result of any Governmental Authority expending monies as a result of any alleged Release or the existence of any Contaminant on or about the Property or a breach of an Environmental Law.

(4) Neither Borrower nor, to the best of Borrower's knowledge and belief, any other person (including but not limited to prior owners, occupants and tenants) has received any notice or advice of any Enforcement Action.

(5) Borrower will keep the Property and any other real property owned, occupied or operated by Borrower free of any Contaminants and in compliance with applicable Environmental Laws.

(6) Borrower will not use the Property or any other real property owned, operated or occupied by Borrower for the manufacture, placement, generation, storage, location or disposal of any Contaminants nor permit the Property or any other property owned, occupied or operated by it to be used in such a manner, except in compliance with applicable Environmental Laws.

(7) Borrower shall not cause or permit to exist as a result of any intentional or unintentional action or omission on its part or for which it is responsible under applicable Environmental Laws a Release of any Contaminant unless and to the extent such Release is made pursuant to and in compliance with the conditions of a permit issued by all appropriate federal and/or state governmental authorities.

(8) In the event of any Release of a Contaminant onto the Property or onto any other property owned, occupied or leased by Borrower or for which Borrower is otherwise responsible under applicable Environmental Laws, it shall promptly notify Lender and remediate such Release in accordance with all Environmental Laws of appropriate governmental entities and authorities having jurisdiction.

22. **REMEDIES CUMULATIVE.** Each remedy herein provided shall not be exclusive of any other remedy herein or now or hereafter existing by law, and may be exercised concurrently, independently or successively in any order whatsoever. Every power or remedy hereby given to Borrower or to Lender, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Lender holds any additional security for any obligation secured hereby, Lender may enforce the sale thereof, at Lender's option, either before, contemporaneously with, or after the sale is made hereunder, and on any uncured default of Borrower, Lender may, at its option, offset against any indebtedness owed hereunder to it by Borrower the whole or any part of any indebtedness owing by it to Borrower, and the Lender is hereby authorized and empowered at its option, without any further obligation to do, and without affecting the obligations hereof, to apply towards the payment of any indebtedness secured hereby of the Borrower to the Lender, any and all sums of money belonging to Borrower which the Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, any unapplied Funds held by Lender. No offset by Lender hereunder shall relieve Borrower from paying installments on the obligation secured hereby as they become due.

23. **NOTICE.** Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this Instrument shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or sent by overnight courier service, and, if mailed, shall be deemed received on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third business day after deposit in the mail in the continental United States, postage prepaid, addressed to the party to receive such notice at the address set forth below, and if sent by overnight courier shall be deemed received on the day on which such notice is actually received by the party to whom it is addressed or the date delivery is refused, either as indicated in the records of such courier service. Notice of change of address shall be given by written notice in the manner set forth in this paragraph.

Notice to Borrower shall be addressed to: ComFed-Dodge Fund VII
Attn: N.P. Dodge, Jr.
8701 West Dodge Road
Omaha, Nebraska 68114

Notice to Lender shall be addressed to: Commercial Federal Bank
Attention: Income Property Lending
13220 California Street
Omaha, Nebraska 68154

24. **SUCCESSORS AND ASSIGNS BOUND; AGENTS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of this Instrument. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender.

25. **GOVERNING LAW.** The loan contract between the parties, including this Instrument, the Note and any other obligation which this Instrument secures, is made pursuant to and shall be construed and governed by the laws of the United States and the rules and regulations promulgated thereunder, and, to the extent the laws of a state are applicable (including laws regarding usury), by the laws of the State in which this Instrument is recorded and the rules and regulations promulgated thereunder.

26. **RECONVEYANCE OR RELEASE.** The Trustee named in this Instrument securing the Note, or any successor Trustee thereunder, may charge such fees for each full or partial reconveyance or release of this Instrument as Trustees then customarily charge for such services, and as are authorized or not prohibited by applicable law.

27. **SUBSTITUTION OF TRUSTEE.** Lender may, from time to time, by instrument in writing substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed and acknowledged by Lender and recorded in the office of the recorder of the county or counties where such Property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee's predecessor, succeed to all the title, estate, rights, powers and duties as Trustee. Such instrument shall contain the name and address of the Successor Trustee. The procedure herein provided for substitution of Trustee shall not be exclusive of other provisions for substitution provided by law.

28. **TRUSTEE.** Except as required by law, Trustee is not obligated to notify any party hereto of pending sale under any other instrument or of any action or proceeding in which Borrower, Lender or Trustee shall be a party.

29. **TIME OF ESSENCE.** Time is of the essence for all of Borrower's obligations hereunder and the Loan Documents.

30. **WAIVER OF STATUTE OF LIMITATIONS.** To the extent permitted by law, Borrower waives all present or future statutes of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Instrument or any rights or remedies hereunder.

31. **INJURY TO PROPERTY.** All causes of action of Borrower, whether accrued before or after the date of this Instrument for damages or injury to the Property or any part thereof, or in connection with or affecting the Property or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option, assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all of its expenses, including reasonable attorneys' fees, may apply such proceeds to the sums secured by this Instrument or to any deficiency under this Instrument or may release any monies so received by it or any part thereof as Lender may elect. Lender may, at its option, appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Borrower agrees to execute any further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

32. **OFFSETS.** No indebtedness secured by this Instrument shall be deemed to have been offset or compensated by all or part of any claim, cause of action, counterclaim or part of any claim, cause of action, counterclaim or crossclaim, whether liquidated or unliquidated, which Borrower now or hereafter may have or may claim to have against Lender.

33. **MISREPRESENTATION OR NONDISCLOSURE.** Borrower has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the Note which this Instrument secures and, in the event that Borrower has made any material misrepresentations or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this Instrument, irrespective of the maturity date specified in the Note, immediately due and payable. The Trustee, upon presentation to it of an affidavit signed by Lender setting forth facts showing a default by Borrower under this paragraph (if such affidavit is required by applicable law), is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

34. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Property held by Lender, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

35. **REQUEST FOR NOTICES.** Borrower requests that copies of any notice of default and notice of sale hereunder be sent to Borrower at Borrower's address stated above.

36. **GENERAL PROVISIONS.**

a. This Instrument applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns.

b. The term "Lender" shall mean the owner and holder (including a pledgee) of the Note secured hereby, whether or not named as Lender herein.

c. Wherever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and vice versa.

d. Captions and paragraphs headings used herein are for convenience only, are not part of this Instrument, and shall not be used in construing it.

37. **ADJUSTABLE RATE PROVISIONS.** The Note contains provisions which permit: (a) increases and decreases to the rate of interest provided in the Note; and (b) increases and decreases to the payment of principal and interest. Reference is made to the Note for a complete description of the adjustable rate terms of the indebtedness secured by this Instrument.

38. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option, so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that such notes are secured hereby.

39. **CORRECTION OF DEFECTS.** Borrower, upon request of Lender, shall promptly correct any defect, error or omission that may be discovered by Lender in the content of this Instrument or in the execution or acknowledgment hereof. In addition, Borrower shall do such further acts as may be deemed necessary by Lender or that Lender may reasonably request to carry out more effectively the purposes of this Instrument, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the first lien and security interest hereof.

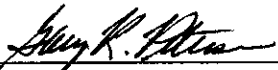
40. **INVALID PROVISIONS.** Should any term, provision, covenant or condition of this Instrument be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Instrument, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. In addition, should this Instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the Borrower being the Mortgagor and Lender being the Mortgagee.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

COMFED-DODGE FUND VII, A NEBRASKA LIMITED PARTNERSHIP, a Nebraska limited partnership, Borrower

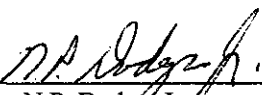
By ComFed-Dodge Fund VII Venture, a
Nebraska general partnership,
Its General Partner

By Commercial Federal Realty Investors
Corporation, a Nebraska corporation,
Its General Partner

By: 

Gary R. Petersen
Its President

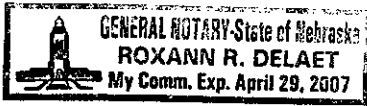
By N.P. Dodge Investments, Inc., a Nebraska
corporation
Its General Partner

By: 

N.P. Dodge, Jr.
Its President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

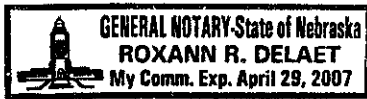
The foregoing instrument was executed and acknowledged before me this 31st day of March, 2005, by Gary R. Petersen, President of Commercial Federal Realty Investors Corporation, a Nebraska corporation, General Partner of ComFed-Dodge Fund VII Venture, a Nebraska general partnership, General Partner of Borrower, for and on behalf of Borrower.



Roxann R. DeLaet
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was executed and acknowledged before me this 31st day of March, 2005, by N. P. Dodge, Jr., President of N. P. Dodge Investments, Inc., a Nebraska corporation, General Partner of ComFed-Dodge Fund VII Venture, a Nebraska general partnership, General Partner of Borrower, for and on behalf of Borrower.



Roxann R. DeLaet
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

Attached to and forming a part of file number: OTW94982

Parcel A:

Part of Lots 1, 2 and 3, in Replat of Part of Blocks ⁹ and 10, Meadow Lane Park, and part of Lot 1, in Block 10, in Meadow Lane Park (2nd Platting), both Additions to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska more particularly described as follows:

Beginning at the Southwest corner of Lot 2, in Replat of Part of Blocks 9 and 10, Meadow Lane Park; thence North $00^{\circ}52'40''$ East, 216.37 feet; thence North $19^{\circ}24'00''$ East, 138.70 feet, to a point of curve to the right; thence along a cruve to the right (radius being 399.37 feet, chord bearing North $49^{\circ}53'54''$ East, a chord distance of 405.37 feet), an arc distance of 425.17 feet; thence South $00^{\circ}52'40''$ West, 126.28 feet; thence North $89^{\circ}56'40''$ East, 10.00 feet; thence South $00^{\circ}52'40''$ West, 395.00 feet; thence South $89^{\circ}56'40''$ West, 5.00 feet; thence South $00^{\circ}52'40''$ West, 87.00 feet, to a point on the South line of said Lot 3; thence South $89^{\circ}56'40''$ West, on the South line of said Lots 2 and 3, 355.14 feet to the point of beginning.

PARCEL B:

That part of Lots 1, 4 and 5 in Replat of Part of Blocks 9 and 10, Meadow Lane Park, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:

The South 155.00 feet of the West 70.00 feet of Lot 4, and the East 180.00 feet of the South 270.00 feet of Lot 4; and all of Lot 5, EXCEPT the West 24.00 feet of the North 105.00 feet of said Lot 5; together with the East 131.00 feet of Lot 1, and the South 10.00 feet of the West 95.00 feet of the East 226.00 feet of Lot 1, EXCEPT that part taken for highway purposes, and EXCEPT that part of said Lot 5 described as follows: Beginning at the Southeast corner of said Lot 5; thence Westerly, a distance of 24.04 feet, along the Northerly existing Davenport Street right of way line; thence Northeasterly, deflecting $133^{\circ}59'$ right, a distance of 35.21 feet; thence South, deflecting right, a distance of 25.34 feet, along the Westerly existing 117th Street right of way line, to the point of beginning.

PARCEL C:

Part of Lots 1, 3, 4 and 5 in Replat of part of Blocks 9 and 10, Meadow Lane Park, (EXCEPT that part of Lot 1 taken for State Highway right of way), together with that part of Lot 1, in Block 10, in Meadow Lane Park (2nd Platting), both additions to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, more particularly

described as follows:

Beginning at the Southeast corner of Lot 3, in Replat of part of Blocks 9 and 10, Meadow Lane Park; thence South $89^{\circ}56'40''$ West, on the South line of said Lot 3, 170.00 feet; thence North $00^{\circ}52'40''$ East, 87.00 feet; thence North $89^{\circ}56'40''$ East, 5.00 feet; thence North $00^{\circ}52'40''$ East, 395.00 feet; thence South $89^{\circ}56'40''$ West, 10.00 feet; thence North $00^{\circ}52'40''$ East, 126.28 feet, to a point on the South curved right of way line of West Dodge Road; thence on a curve to the right (radius being 399.37 feet) and on the South right of way line of West Dodge Road, chord bearing North $83^{\circ}21'24''$ East, chord distance of 35.44 feet, for an arc distance of 35.45 feet; thence North $85^{\circ}29'00''$ East, on the South right of way line of West Dodge Road; 511.09 feet; thence South $00^{\circ}52'40''$ West, 267.10 feet thence South $89^{\circ}56'40''$ West, 95.00 feet; thence South $00^{\circ}52'40''$ West, 115.00 feet; thence South $89^{\circ}56'40''$ West, 204.00 feet; thence South $00^{\circ}52'40''$ West, 115.00 feet; thence South $89^{\circ}56'40''$ West, 70.00 feet; thence South $00^{\circ}52'40''$ West, 155.00 feet, to the point of beginning.

AND EXCEPT That portion of Parcels A, B and C set forth above which was taken for road right of way by the State of Nebraska Department of Roads pursuant to the Return of Appraisers filed October 18, 2004 as instrument number 2004136057 of the Records of Douglas County, Nebraska.