

94-08340

INSTRUMENT NUMBER
94-08340

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Carol A. Davis
REGISTER OF DEEDS

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ASSUMPTION AGREEMENT AND AMENDMENT OF GROUND LEASE

THIS ASSUMPTION AND MODIFICATION OF GROUND LEASE ("**Agreement**") made as of the 25TH day of March, 1994, by and between **SOUTHROADS SHOPPING CENTER LIMITED LIABILITY COMPANY**, a limited liability company organized and existing under the laws of the State of Delaware ("**Southroads**"), whose address for purposes of this Deed of Trust is 5015 Underwood Avenue, Omaha, Nebraska 68132; and **WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY**, a Nebraska corporation (the "**Society**"), whose address is Woodmen Tower, 1700 Farnam Street, Omaha, Nebraska 68102, Attention: Investment Division.

R E C I T A L S :

A. Under the terms of that certain indenture of lease made as June 29, 1965, and recorded in the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska on June 30, 1965, at Book 35, Page 367 (the "**Lease**"), the Society granted a leasehold interest in and to that certain real property described on Exhibit "A" attached hereto and incorporated herein by this reference (the "**Property**") to Alan Baer and J. D. Diesing, as Trustees of the E. John Brandeis Trust.

B. Alan Baer, J. D. Diesing, Lester K. Marcus and Allan Jay Garfinkle, as Trustees of the E. John Brandeis Trust, assigned the Lease to Alan Baer under the terms of that certain Assignment of Lease made as of December 31, 1974, and Assignment of Lease made as of January 1, 1979, and recorded in the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska on August 27, 1975, at Book 48, Page 465, and by that certain Assignment of Lease recorded in the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska on July 31, 1979, at Book 52, Page 505. (Alan Baer, J. D. Diesing, Lester K. Marcus and/or Allan Jay Garfinkle, as Trustees of the E. John Brandeis Trust are hereinafter referred to herein as the "**Brandeis Trust**"; and Alan Baer is hereinafter referred to herein as "**Baer**".)

C. Baer assigned the Lease to Patrician Equities Corp., a Florida Corporation under the terms of that certain Assignment of Ground Lease made as of April 1, 1984, and recorded in the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska on April 30, 1984, at Book 57, Page 270. (Patrician Equities Corp. is hereinafter referred to herein as "**Patrician**".)

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D. Patrician granted a lien on the Lease in favor of Baer under the terms of that certain Nebraska Deed of Trust and Security Agreement dated April 1, 1984, and recorded in the Mortgage Records of the Register of Deeds of Sarpy County, Nebraska on April 30, 1984, at Book 203 Page 2576, to secure the payment and performance of certain indebtedness, liabilities and obligations described in said deed of trust.

E. Patrician assigned the Lease to Southroads Mall Limited Partnership, a Nebraska limited partnership under the terms of that certain Assignment of Ground Lease made as of April 1, 1984, and recorded in the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska on April 30, 1984, at Book 57, Page 273. (Southroads Mall Limited Partnership is hereinafter referred to herein as the "**Partnership**".)

F. The Lease was amended by that certain Amendment to Ground Lease (the "**Amendment**") between The Society and the Partnership dated as of April 1, 1984, and recorded in the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska on April 30, 1984, at Book 57, Page 275. (The Lease, as amended by the Amendment is hereinafter referred to as the "**Lease**".)

G. On July 30, 1992, Baer filed an action in the District Court of Nebraska in and for Sarpy County, at Docket 9268, Page 1043, to foreclose upon the lien on the Lease granted to Baer by Patrician. The Court thereafter entered a Decree finding certain amounts due and owing to Baer by Patrician, and, furthermore, that a Master Commissioner duly appointed by the Court should cause the leasehold interest in the Property under the Lease to be sold to pay the same. Pursuant to said Decree, on February 15, 1994, said Master Commissioner sold the leasehold interest in the Property under the Lease to Baer. Said sale to Baer was on February 18, 1994, confirmed by the Court, which ordered the Master Commissioner to convey the leasehold interest in the Property under the Lease to Southroads, as assignee of Baer. Said Master Commissioner did by that certain Master Commissioner's Deed dated February 18, 1994, and recorded in the Deed Records of the Register of Deeds of Sarpy County, Nebraska on February 18, 1994, as instrument number 94-03972, convey the leasehold interest in the Property under the Lease to Southroads.

H. On the date hereof, the Society has made certain loans to Southroads (the "**Loans**") secured, without limitation, by that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement (the "**Deed of Trust**") dated as of the date hereof, made by Southroads to Lawrence E. Kritenbrink, as Trustee, for the benefit of the Society, as Beneficiary, granting, without limitation, all of Southroads' right, title and interest in the Property under the Lease. It is a condition precedent to the making of said loans that Southroads shall assume and agree to perform, for the benefit of the Society,

all of the obligations of the lessee under the Lease, and to agree to certain other modifications to the terms of the Lease.

W I T N E S S E T H :

In consideration of the premises and in order to induce the Society to make the Loans, Southroads and the Society hereby agree as follows:

1. Southroads assumes and agrees to pay all rentals and all other amounts now or hereafter due and owing to the Society, as Lessor under the terms of the Lease and to perform all other obligations of the Brandeis Trust, Baer, Patrician and/or the Partnership, as Lessee under the Lease, to the Society, as Lessor under the terms of the Lease, now existing or hereafter arising under the Lease, and assumes and agrees to perform and be bound by any and all duties, agreements, covenants and restrictions of or imposed upon the Brandeis, Baer, Patrician and/or the Partnership under the Lease, all to the same extent as if Southroads had been a signatory to the Lease.

2. The Lease is hereby amended to delete Paragraph 27, added to the Lease by the Amendment. Notwithstanding any provision to the contrary contained in the Lease, the indebtedness, obligations and liabilities under the Lease shall be with full recourse to Southroads.

3. Notwithstanding any provision to the contrary contained in the Lease, any Event of Default under the terms of the Deed of Trust shall constitute a default under the terms of the Lease.

4. Notwithstanding any provision to the contrary contained in the Lease, any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be deemed given when hand delivered, within three (3) days of the date sent by certified mail, return receipt requested, or the next business day after the date sent by a nationally recognized overnight courier service, to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as the Society, as Lessor, or Southroads, as Lessee, shall in like manner designate in writing.

5. The Society agrees that, notwithstanding any prior default or event of default under the Lease, upon the effectiveness of this Agreement and the funding of the Loans, the Lease shall as of the date of the effectiveness of this Agreement and the funding of the Loans, be in full force and effect in favor of Southroads, as Lessee, to the same extent as if Southroads had been a signatory to the Lease and as if no default or event of default had, prior to the date of the effectiveness of this Agreement and the funding of the loans by the Society; provided, however, that notwithstanding any provision of this paragraph to the contrary, any condition or


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event constituting a default or event of default under the Lease, existing on the date of the effectiveness of this Agreement and the funding of the Loans, which shall continue to exist subsequent to the date of the effectiveness of this Agreement and the funding of the Loans, shall after the giving of any notice or the passing of any grace period set forth in the Lease, constitute a default or event of default under the Lease.

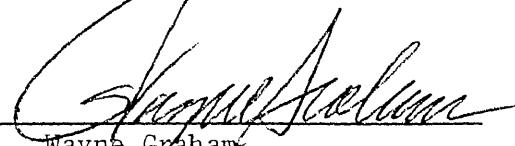
6. Except as specifically amended above, the Lease shall remain in full force and effect and are hereby ratified and confirmed.

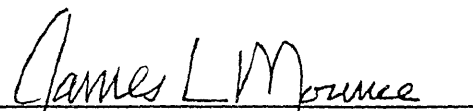
IN WITNESS WHEREOF, the undersigned have executed and delivered the above and foregoing instrument as of the date first above written.

SOUTHROADS SHOPPING CENTER LIMITED
LIABILITY COMPANY, a Delaware
limited liability company

By: 
Alan Baer, President

WOODMEN OF THE WORLD LIFE INSURANCE
SOCIETY, a Nebraska corporation

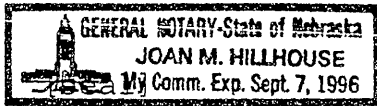
By: 
Name: Wayne Graham
Its: Executive Vice President

By: 
Name: James L. Mounce
Its: Secretary

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STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 24th day of March, 1994, by Alan Baer, President of Southroads Shopping Center Limited Liability Company, a Delaware limited liability company, on behalf of the company.

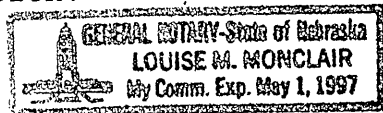


Joan M. Hillhouse
Notary Public

My commission expires: 9-7-96

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 8 day of April, 1994, by Wayne Graham and James L. Mounce, the Executive Vice President and Secretary, respectively, of Woodmen of the World Life Insurance Society, a Nebraska corporation, on behalf of the corporation.



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Louise M. Monclair
Notary Public

My commission expires: 5/1/97

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EXHIBIT "A"

Premises

PARCEL 1: A tract of land lying wholly within the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 14 North, Range 13 East of the 6th P.M., in Sarpy County, Nebraska, containing the following parcels of land: All of Lots 2C1A, 2C1B, 2C2, 3, 4A2, 4A2B, 4C, 5A, 5A2, 5C, 6A1A1, 6A1A2, 6A1A3, 6B, 7A1, 7B, 8A, 8A1, 8A2, 8A3, 8C, and 8D, of CLINTON'S SUBDIVISION, in said Section 14, all of Tax Lots F2B1B1, F2B1B2 AND G4 in said Section 14, All of Lots 7 and 10, and part of Lots 11 and 12, in LAWNSDALE, a Subdivision in said Section 14, All of Lots 1 and 2, and part of Lots 3, 6, and 7, in JULL'S SUBDIVISION, in said Section 14, also portions of vacated Prairie Avenue, all being more particularly described as follows:

Beginning at the intersection of the East right of way line of State Highway 73-75, and the North right of way line of Childs Road; thence North 15°20'02" West (assumed bearing), along said East right of way line of State Highway 73-75, 488.69 feet; thence continuing along said East right of way line, along a curve to the left, with a radius of 2,914.90 feet and an arc length of 462.94 feet (chord bearing North 20°21'12" West, 462.46 feet), to the intersection of said East right of way line and the South right of way line of Brewster Road; thence North 73°25'50" East along said South right of way line, 654.09 feet; thence North 60°00'48" East, continuing along said South right of way line, 354.84 feet; thence North 74°31'17" East continuing along said South right of way line 20.55 feet; thence South 00°15'35" West, 134.81 feet; thence South 88°27'10" East; 107.52 feet; thence South 00°37'45" West, 3.50 feet; thence South 88°27'10" East, 3.00 feet; thence North 00°37'45" West, 3.50 feet; thence South 88°27'10" East, 3.00 feet; thence North 00°37'45" East 3.50 feet; thence South 89°19'25" East 94.31 feet; thence South 00°09'16" West, 76.14 feet; thence North 87°15'31" East, 82.20 feet; thence South 00°54'27" West, 71.73 feet; thence North 89°11'48" West, 35.42 feet; thence South 00°15'43" West, 610.98 feet; thence North 89°45'33" West, 29.54 feet; thence South 55°03'43" West, 15.00 feet; thence South 34°56'17" East, 349.00 feet; thence South 10°19'57" East, 36.03 feet, to a point on the North right of way line of Childs Road; thence South 89°57'58" West, along North right of way line of Childs Road, 1,099.18 feet, to the Point of beginning.

EXCEPT that part thereof more particularly described as follows:

A tract of land located in Tax Lot L, in the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 14 North, Range 13 East of the 6th P.M., in Sarpy County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of said Tax Lot L, said point also being the intersection of the East right of way line of Nebraska Highway 73-75 and the North right of way line of Childs Road; thence North 15°20'02" West, (Assumed bearing), along the East right of way line of Nebraska Highway 73-75, a distance of 13.48 feet; thence North 89°57'58" East, along a line parallel to said North right of way line of Childs Road; a distance of 588.56 feet; thence South 00°02'02" East, 13.00 feet, to a point on the North right of way line of Childs Road; thence South 89°57'58" West, along the North right of way line of Childs Road, a distance of 585.00 feet, to the

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Point of Beginning.

NOTE: The above premises is also described as Lot L, Clinton's Subdivision, in said Section 14, Township 14 North, Range 13 East of the 6th P.M., in Sarpy County, Nebraska.

PARCEL 2: A tract of land being all of Lots 4 and 5, and parts of Lots 3, 6 and 7, in JULL'S SUBDIVISION, a Subdivision, as surveyed, platted and recorded, in Sarpy County, Nebraska, together with the Easterly 20.00 feet of vacated Prairie Avenue adjacent to said Lots 3, 4 and 5 on the West, all being more particularly described as follows:

Commencing at the intersection of the South right of way line of Brewster Road and the East right of way line of State Highway 73-75; thence Easterly, along said South right of way line on the following Four described courses: (1) North $73^{\circ}25'50''$ East, (assumed bearing) 654.09 feet; (2) thence North $69^{\circ}00'48''$ East, 354.84 feet; (3) thence North $74^{\circ}31'17''$ East, 20.55 feet; (4) thence North $75^{\circ}21'07''$ East, 21.36 feet, to the Northwest corner of said Lot 5, and the Point of Beginning; thence North $72^{\circ}56'34''$ East, 76.06 feet, along the North line of Lots 5 and 6; thence North $74^{\circ}11'15''$ East, 50.36 feet, along the North line of Lot 6; thence North $72^{\circ}56'54''$ East, 50.50 feet, along the North line of Lots 6 and 7; thence North $77^{\circ}08'24''$ East, 14.99 feet, along the North line of Lots 7; thence South $00^{\circ}09'36''$ West, 198.49 feet; thence North $89^{\circ}19'25''$ West, 94.31 feet; thence South $00^{\circ}37'45''$ West, 3.50 feet; thence North $88^{\circ}27'10''$ West, 3.00 feet; thence North $00^{\circ}37'45''$ East, 3.50 feet; thence North $88^{\circ}27'10''$ West, 107.52 feet; thence North $00^{\circ}15'35''$ East, 134.81 feet; thence North $75^{\circ}21'07''$ East, 21.36 feet, to the Point of Beginning.

NOTE: The above premises is sometimes described as Lot A, in Jull's Subdivision, in Section 14, Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.