

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2005-45964  
2005 DEC 14 A 8:38 P  
*Sharon J. Dowling*  
REGISTER OF DEEDS

COUNTER DB C.E. D  
VERIFY DB D.E. DM  
PROOF P  
FEES \$ 150.50  
CHECK# \_\_\_\_\_  
CHG RELS CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

**DEED OF TRUST**  
**AND**  
**SECURITY AGREEMENT**  
**AND**  
**FIXTURE FINANCING STATEMENT**

14 THIS INDENTURE, (hereinafter referred to as "Deed of Trust"), made and given this day of December, 2005, by IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP ("Grantor"), whose post office address is 12 South Main Street, Minot, North Dakota 58701, to STEWART TITLE GUARANTY COMPANY ("Trustee"), whose post office address is 1603 Farnam Street, Suite 219, Omaha, Nebraska for the benefit of CANADA LIFE INSURANCE COMPANY OF AMERICA, a Michigan corporation ("Beneficiary"), whose post office address is 8515 E. Orchard Road, Suite 3T2, Greenwood Village, CO 80111, Attn: Mortgage Investments.

WITNESSETH, that the said Grantor in consideration of the debt hereinafter described and the sum of One and 00/100 Dollar (\$1.00) to Grantor in hand paid by the said Beneficiary, the receipt whereof is hereby acknowledged, does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto the said Trustee, its successors and assigns, forever in trust for the benefit of Beneficiary with power of sale and right of entry and possession, AND GRANTS TO THE BENEFICIARY A SECURITY INTEREST IN all of the following properties hereinafter set forth (all of the following being hereafter collectively referred to as the "Premises"):

**A. REAL PROPERTY**

All the tracts or parcels of real property lying and being in the Counties of Douglas and Sarpy, State of Nebraska, all as more fully described in Exhibit "A" attached hereto and made a part hereof, together with all the estates and rights in and to the real property and in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property; and

*RELS*  
*0551.00 2976*

*45964*

*① \$151.00*

A

## B. PERSONAL PROPERTY

All buildings, improvements, personal property, fixtures, fittings and furnishings, owned by Grantor and now or hereafter attached to, located at, or placed in the improvements on the real property described herein including, without limitation i) all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, ii) all maintenance supplies and repair equipment, iii) all refrigerators, stove tops, ovens, range hoods, clothes washers, clothes dryers, garage door openers, chairs, tables and other hallway area furnishings, snow blower, and pool and pool equipment and accessories, draperies, carpeting, floor coverings, screens, storm windows and window coverings, blinds, awnings, shrubbery and plants, iv) all elevators, escalators and shafts, motors, machinery, fittings and supplies necessary for their use, v) all building materials and supplies now or hereafter delivered to the Premises (it being understood that the enumeration of any specific articles of property shall in no way be held to exclude any items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Grantor in any such items hereafter acquired, as well as the Grantor's interest in any lease, or conditional sales agreement under which the same is acquired, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises; and

## C. RENTS, LEASES AND PROFITS

All rents, income, contract rights, leases and profits now due or which may hereafter become due under or by virtue of any lease, license or agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all tenant security deposits; and

## D. JUDGMENTS AND AWARDS

All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Premises, including any awards for damages sustained to the Premises, for a temporary taking, change of grade of streets or taking of access.

## E. INSURANCE PROCEEDS

All awards, payments, proceeds now or hereafter obtainable by Grantor under any policy of insurance insuring the Premises including but not limited to the proceeds of casualty insurance, title insurance, business interruption/rents insurance or other insurance maintained with respect to the Premises whether by Grantor or otherwise.

## F. INTANGIBLES

All contracts, licenses, permits, management agreements, records, files, contents, governmental approvals and intangibles used, useful or required in the ownership and management of the Premises together with all soil reports, building permits, variances, licenses, utility permits and other permits and agreements relating to the construction or equipping of the

B

improvements on the Premises, or the operation or maintenance of the Premises, including, without limitation, all warranties and contract rights.

It is specifically understood that the enumeration of any specific articles of property shall not in any way exclude or be held to exclude any items of property not specifically mentioned. All of the Premises hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the Premises, and shall for the purposes of this Deed of Trust be deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD THE SAME, together with the possession and right of possession of the Premises, unto the Beneficiary, its successors and assigns, forever.

PROVIDED NEVERTHELESS, that if the Grantor, its successors or assigns, shall pay to the Beneficiary, its successors or assigns, the sum of Five Million Four Hundred Thousand and 00/100 Dollars (\$5,400,000.00), together with interest thereon at the per annum rate of Five and Forty Hundredths percent (5.40%), all according to the terms of that certain promissory note in said principal amount of even date herewith ("Note") executed by the Grantor and payable to the Beneficiary, the terms and conditions of which are incorporated herein by reference, the balance of said principal sum together with interest thereon being due and payable in any event on January 1, 2016, and shall repay to the Beneficiary, its successors or assigns, at the times demanded and with interest thereon at the interest rate then in effect on the Note, all sums advanced in protecting the lien of this Deed of Trust, in payment of taxes on the Premises, in payment of insurance premiums covering improvements thereon, in payment of principal and interest on prior liens, in payment of expenses and attorney's fees herein provided for and all sums advanced for any other purpose authorized herein, (the Note and all such sums, together with interest thereon, being collectively referred to as the "Indebtedness Secured Hereby"), and shall keep and perform all of the covenants and agreements herein contained, then this Deed of Trust shall become null and void, and shall be released at Grantor's expense.

1.

GENERAL COVENANTS AGREEMENTS WARRANTIES

1.1 Payment of Indebtedness: Observance of Covenants Grantor shall, and hereby agrees to, duly and punctually pay each and every installment of principal and interest on the Note and all other Indebtedness Secured Hereby, as and when the same shall become due, and shall, and hereby agrees to, duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other instrument given as security for the payment of the Note.

1.2 Maintenance Repairs. Grantor shall not abandon the Premises, shall keep and maintain the Premises in good condition, repair and operating condition free from any waste or misuse, and shall promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises which may become damaged or destroyed to their condition prior to any such damage or destruction. Grantor further agrees that without the prior consent of the Beneficiary it will not expand any improvements on the Premises, erect any new improvements

C

or make any material alterations in any improvements which shall alter the basic structure, affect the market value or change the existing architectural character of the Premises, nor remove or demolish any improvements, and shall complete within a reasonable time any buildings now or at any time in the process of erection on the Premises.

1.3 Compliance with Laws. Grantor shall comply with all requirements of law, municipal ordinances and regulations affecting the Premises, shall comply with all private restrictions and covenants affecting the Premises and shall not acquiesce in or seek any rezoning classification affecting the Premises.

1.4 Payment of Operating Costs: Prior Deed of Trusts and Liens. Grantor shall pay all operating costs and expenses of the Premises, shall keep the Premises free from levy, attachment, mechanics', materialmen's and other liens ("Liens") and shall pay when due all indebtedness which may be secured by mortgage, lien or charge on the Premises.

1.5 Payment of Impositions. Grantor shall pay when due and in any event before any penalty attaches all taxes, assessments, governmental charges, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein ("Impositions") and will upon demand furnish to the Beneficiary proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the Impositions herein required to be paid by the Grantor, or changing in any way the laws relating to the taxation of deeds of trust or debts secured by deeds of trust or a beneficiary's interest in mortgaged premises, so as to impose such Imposition on the Beneficiary or on the interest of the Beneficiary in the Premises, then, in any such event, Grantor shall bear and pay the full amount of such Imposition, provided that if for any reason payment by Grantor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness Secured Hereby wholly or partially usurious, Beneficiary, at its option, may declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable, without prepayment premium, or Beneficiary, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness Secured Hereby unlawful or usurious, in which event Grantor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said Imposition.

1.6 Contest of Impositions, Liens and Levies. Grantor shall not be required to pay, discharge or remove any Imposition or any Lien so long as the Grantor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the Lien or Imposition so contested and the sale of the Premises, or any part thereof, to satisfy the same, provided that the Grantor shall, prior to the date such Lien or Imposition is due and payable, have given such reasonable security as may be demanded by the Beneficiary to insure such payments plus interest or penalties thereon, and prevent any sale or forfeiture of the Premises by reason of such nonpayment. Any such contest shall be prosecuted with due diligence and the Grantor shall promptly after final determination thereof pay the amount of any such Lien or Imposition so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding these provisions Grantor shall (and if Grantor shall fail so to do, Beneficiary, may but shall not be required to) pay any such

D

Lien or Imposition notwithstanding such contest if in the reasonable opinion of the Beneficiary, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

1.7 Protection of Security. Grantor shall promptly notify Beneficiary of and appear in and defend any suit, action or proceeding that affects the Premises or the rights or interest of Beneficiary hereunder and the Beneficiary may elect to appear in or defend any such action or proceeding. Grantor agrees to indemnify and reimburse Beneficiary from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and reasonable attorney's fees and such amounts together with interest thereon at the rate then in effect in the Note shall become additional "Indebtedness Secured Hereby" and shall become immediately due and payable.

1.8 Annual Statements. Grantor shall within one hundred twenty (120) days after the end of each fiscal year furnish or cause to be furnished to the Beneficiary (i) financial and operating statements of the Premises for such fiscal year, (ii) the financial statement of Grantor, including a balance sheet and a profit and loss statement, for its fiscal year, all in reasonable detail and conforming to generally recognized accounting principles consistently applied, (iii) a current rent roll for the Premises in the same form as the rent roll submitted in connection with the execution and delivery hereof and (iv) financial and operating statements of Investors Real Estate Trust, a North Dakota real estate investment trust (the "Guarantor") including a balance sheet and a profit and loss statement for its fiscal year, all in reasonable detail and conforming to generally recognized accounting principles consistently applied. Notwithstanding the foregoing, the annual statements of the Grantor and of the Guarantor may be in the form of the Annual Securities and Exchange Commission (SEC) filing for April 30 of each year or the annual report of such entities so long as such SEC filing and or annual report include the information required pursuant to clauses (i), (ii), (iii) and (iv) above. Such financial statements shall be prepared in a manner satisfactory to Beneficiary and shall be certified true and correct by the Grantor and any Guarantor of the Indebtedness Secured Hereby. In the event Grantor fails to furnish or cause to be furnished any such statements, the Beneficiary may cause an audit to be made of the respective books and records at the sole cost and expense of the Grantor. Beneficiary also shall have the right to examine at their place of safekeeping at reasonable times all books, accounts and records relating to the operation of the Premises.

1.9 Additional Assurances. Grantor agrees upon reasonable request by the Beneficiary to execute and deliver such further instruments, deeds and assurances including financing statements under the Uniform Commercial Code and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Deed of Trust and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended so to be. Grantor agrees to pay any recording fees, filing fees, note taxes, deed of trust registry taxes or other charges arising out of or incident to the filing or recording of the Deed of Trust, such further assurances and instruments and the issuance and delivery of the Note.

1.10 Title. Grantor is the lawful owner of and has good and marketable fee simple absolute title to the Premises and will warrant and defend title to the same free of all liens and encumbrances, other than the Encumbrances permitted under the policy of Beneficiary's title insurance issued to Beneficiary in connection with this Deed of Trust and has good right and

E

lawful authority to grant, bargain, sell, convey, mortgage and grant a security interest in the Premises as provided herein.

1.11 No Conflict With Other Documents Obligations. The execution and delivery by the Grantor of this Deed of Trust, the Note, the other collateral documents to which the Grantor is a party and any other instruments contemplated hereby or securing the Note, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of the terms and conditions hereof and thereof do not and will not conflict with or result in a breach of any court order, judgment or decree or of any deed of trust, indenture, loan agreement or instrument to which the Grantor or to which any property of the Grantor is subject, and does not and will not constitute a default under any of the foregoing, or result in the creation or imposition of any lien charge or encumbrance of any nature upon any of the property or assets of the Grantor contrary to the terms of any instrument or agreement. This Deed of Trust has been lawfully executed by the Mortgagor in full compliance with its Articles of Partnership and has met all necessary partner approvals.

1.12 No Suits Pending. There are no actions, suits or proceedings pending or, to the knowledge of the Grantor, threatened against the Grantor or the Premises in any court or before any Federal, State, County, City or other governmental authority or before any arbitrator which, if decided adversely to the Grantor would have a materially adverse effect upon the Grantor or upon the Premises, or the value thereof, and the Grantor is not in default with respect to any order of any court or governmental agency.

1.13 Current Compliance With Laws. The Premises as improved on the date hereof, comply with all material requirements of laws, including requirements of any Federal, State, County, City or other governmental authority having jurisdiction over the Grantor or the Premises and including, but not limited to, any applicable zoning, occupational safety and health, energy and environmental laws, ordinances and regulations, there is no hazardous waste contamination in or about the Premises and no pollutants are stored thereon; and the Grantor has obtained all necessary consents, permits and licenses to construct, occupy and operate the Premises for its intended purposes.

1.14 Hazardous Materials. Except as may have been disclosed (i) in writing to the Beneficiary by the Grantor at the time of execution and delivery of this Deed of Trust, or (ii) in any environmental report provided by Grantor to Beneficiary at the time of execution and delivery of this Deed of Trust, Grantor covenants, represents and warrants to Beneficiary, its successors and assigns, that it has not used or permitted and will not use or permit the Premises to be used, whether directly or through contractors, agents or tenants, and to the best of Grantor's knowledge the Premises have not at any time been used for the generating, transporting, treating, storage, manufacture, emission of, or disposal of any petroleum products or of any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), or the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA") or any other federal, state or local environmental laws, statutes, regulations, requirements and ordinances as each may have been amended from time to time ("Hazardous Materials"); that there have been no investigations or reports involving Grantor or the Premises by any governmental authority which in any way pertain to Hazardous Materials; that the

F

operation of the Premises has not violated and is not currently violating any federal, state or local law, regulation, ordinance or requirement governing Hazardous Materials; that the Premises is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites nor any other list, schedule, log, inventory or record of Hazardous Materials or hazardous waste sites, whether maintained by the United States Government or any state or local agency; that the building improvements do not contain any formaldehyde, urea or asbestos; that there are no electrical transformers or other equipment containing dielectric fluid containing polychlorinated biphenyls; and that there are no underground tanks located on the Premises. The Grantor agrees to indemnify and reimburse the Beneficiary, its successors and assigns, for any breach of these representations and warranties and from any loss, damage, expense or cost arising out of or incurred by Beneficiary which is the result of a breach of, misstatement of or misrepresentation of the above covenants, representations and warranties, together with all attorneys' fees incurred in connection with the defense of any action against the Beneficiary arising out of the above. These covenants, representations and warranties shall be deemed continuing covenants, representations and warranties for the benefit of the Beneficiary, and any successor and assigns of the Beneficiary, including any purchaser at a mortgage foreclosure sale, any transferee of the title of the Beneficiary or any subsequent purchaser at a foreclosure sale, and any subsequent owner of the Premises and shall survive any foreclosure of this Deed of Trust and any acquisition of title by Beneficiary or anyone claiming through or under this Deed of Trust as the transferee of the title of Beneficiary. The amount of all such indemnified loss, damage, expense or cost, shall bear interest at the rate of interest in effect on the Note and shall become so much additional Indebtedness Secured Hereby and shall become immediately due and payable in full on demand of the Beneficiary, its successors and assigns. Notwithstanding the foregoing, the Grantor or its tenants may use or store small quantities of Hazardous Materials on the Premises such as paints, cleaning supplies and similar materials used in the ordinary course provided that such use or storage complies at all times with all applicable statutes, regulations, codes and ordinances and is incidental to the Grantor's or such tenants' use of the Premises and further provided that Grantor's obligation to indemnify and reimburse shall extend to any loss, damage, cost or expense arising out of or incurred by Beneficiary in connection with or as a result of such use or storage.

1.15 Handicap Access Laws. Grantor covenants, represents and warrants to Beneficiary, its successors and assigns, that at the time of execution and delivery of this Deed of Trust, the Premises are in compliance with the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act of 1990 (ADA) and with any other federal, state or local statute or regulation as each may have been amended from time to time pertaining to providing access to the Premises to persons with disabilities or to the removal of existing barriers to access by such individuals to the Premises (the "Handicap Access Laws"); that any future modifications/additions to the Premises will comply with the Handicap Access Laws and that all future leases, including renewals of existing leases of the Premises will allocate responsibility for the compliance of such leased space with the Handicap Access Laws to the tenant of such space and will provide for the tenant's agreement to operate in accordance with such laws. The Grantor agrees to indemnify and reimburse the Beneficiary its successors and assigns, for any breach of these representations and warranties and for any and all expense, cost, loss or liability, including attorneys fees, which Beneficiary may incur as the result of a breach, misstatement of or misrepresentation of such covenants, representations and warranties or in connection with the application of or enforcement, threatened or actual, of any Handicap Access Laws. These

G

covenants, representations and warrants shall be deemed continuing covenants, representations and warranties for the benefit of the Beneficiary, and any successor and assigns of the Beneficiary, including any purchaser at a mortgage foreclosure sale, any transferee of the title of the Beneficiary or any subsequent owner of the Premises and shall survive any repayment of the Indebtedness Secured Hereby, discharge by operation of law or any foreclosure of this Deed of Trust and any acquisition of title by Beneficiary or any one claiming through or under this Beneficiary as a transferee of the title of Beneficiary. The amount of all such indemnified loss, damage, expense or costs shall bear interest thereon at the rate of interest in effect on the Note, shall become so much additional Indebtedness Secured Hereby and shall become immediately due and payable in full on demand of the Beneficiary, its successors and assigns.

2.  
INSURANCE AND ESCROWS

2.1 Insurance. Grantor shall obtain, pay for and keep in full force and effect during the term of this Deed of Trust at its sole cost and expense the following policies of insurance:

- (a) Insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, all in the amounts of not less than the full replacement cost of the improvements on the Premises;
- (b) Rents Loss or Business Interruption Insurance covering risk of loss due to the occurrence of any hazards insured against under the required fire and extended coverage insurance in an amount equal to the greater of twelve (12) months' loss or Nine Hundred and Sixty Thousand and 00/100 Dollars (\$960,000.00);
- (c) Broad Form Boiler and Machinery insurance on all equipment and apparatus necessary to operate the Premises, including but not limited to heating, ventilating and air-conditioning equipment, elevators, and water heaters, providing for full repair and replacement cost coverage, if applicable;
- (d) Comprehensive general public liability insurance covering the legal liability of the Grantor against claims for bodily injury, death or property damage occurring on, in or about the Premises in such minimal amounts and with such minimal limits as the Beneficiary may reasonably require but in any event not less than One Million and 00/100 Dollars (\$1,000,000.00) for a single occurrence and Three Million and 00/100 Dollars (\$3,000,000.00) in the aggregate;
- (e) Unless evidence is provided that the Premises are not within a flood plain as defined by the Federal Insurance Administration flood insurance in the maximum obtainable amount but not to exceed the replacement cost of the improvements on the Premises;
- (f) While any improvements are in the process of construction on the Premises:
  - aa) Builder's Risk Insurance - Builder's Risk Insurance written on a completed value basis in an amount equal to the full replacement cost of the



H

Improvements at the date of completion with coverage available on the so-called non-reporting "all risk" form of policy, including coverage against collapse and water damage, with standard non-contributing mortgagee clauses, such insurance to be in such amounts and form and written by such companies as shall be approved by Beneficiary, and the originals of such policies (together with appropriate endorsement thereto, evidence of payment of premiums thereon and written agreements by the insurer or insurers therein to give Beneficiary ten (10) days' prior written notice of any intention to cancel).

- bb) Contractor's Comprehensive General Liability Insurance [including operations, product liability, contingent liability operations, operations of subcontractors, completed operations, contractual liability insurance and comprehensive automobile liability insurance (including hired and non-owned liability)] and with combined single limit and general aggregate coverage for personal and bodily injury and property damage of at least \$1,000,000.00 for each occurrence.
- cc) Workmen's Compensation - Statutory workmen's compensation coverage in the required amounts.

- (g) Such other forms of insurance and endorsements as Beneficiary may from time to time reasonably determine are customarily required for the type and use of the Premises.

Such insurance policies shall be written on forms and with insurance companies satisfactory to Beneficiary with a current A.M. Best Company rating of at least A-VII as of the date of issuance and which are authorized to do business in the State of Nebraska, shall be in amounts sufficient to prevent the Grantor from becoming a co-insurer of any loss thereunder; shall contain a thirty (30) day cancellation notice to Beneficiary; shall be written for a term of not less than one (1) year with the premium prepaid; shall bear a satisfactory mortgagee clause and lender's loss payable endorsement in favor of the Beneficiary with loss proceeds under any such policies to be made payable to the Beneficiary; and shall provide for a deductible not in excess of \$25,000.00. All required policies of insurance or acceptable certificates thereof together with evidence of the payment of current premiums therefor shall be delivered to and be held by the Beneficiary. The Grantor shall, within thirty (30) days prior to the expiration of any such policy, deliver other original policies or certificates of the insurer evidencing the renewal of such insurance together with evidence of the payment of current premiums therefor. In the event of a foreclosure of this Deed of Trust or any acquisition of the Premises by the Beneficiary all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of the Beneficiary to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance the Grantor empowers the Beneficiary to effect insurance upon the Premises at Grantor's expense and for the benefit of the Beneficiary in the amounts and types aforesaid for a period of time covering the time of redemption from foreclosure sale, and if necessary therefore, to cancel any or all existing insurance policies. At least once every three years, Grantor, if

I

Beneficiary requests, agrees to cause its insurance coverage to be reappraised and to furnish Beneficiary copies of the reappraisal reports and insurance recommendations.

2.2 Escrows. Grantor shall deposit with the Beneficiary, or at Beneficiary's request, with its servicing agent, on the first day of each and every month hereafter as a deposit to pay the costs of taxes, assessments and insurance premiums next due ("Charges"):

- (a) Initially a sum such that the amounts to be deposited pursuant to (b) next and such initial sum shall equal the estimated Charges; and
- (b) Thereafter an amount equal to one-twelfth (1/12th) of the estimated annual Charges due on the Premises.

Beneficiary will, upon the presentation to the Beneficiary by the Grantor of the bills therefor, pay the Charges from such deposits or will upon presentation of receipted bills therefor, reimburse the Grantor for such payments made by the Grantor. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then the Grantor shall pay to the Beneficiary on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited to subsequent payments to be made for such items. If a default or an event of default shall occur under the terms of this Deed of Trust the Beneficiary may, at its option, without being required so to do, apply any deposits on hand to the Indebtedness Secured Hereby, in such order and manner as the Beneficiary may elect. When the Indebtedness Secured Hereby has been fully paid any remaining deposits shall be returned to the Grantor as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness Secured Hereby, shall be held for the purposes for which made as herein provided, may be held by Beneficiary or its servicing agent and may be commingled with other funds of the Beneficiary, or its servicing agent, shall be held without any allowance of interest thereon and shall not be subject to the decision or control of the Grantor. Neither Beneficiary nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Beneficiary or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, then the amounts escrowed shall be based on the entire tax bill and Grantor shall have no right to require an apportionment and Beneficiary or its servicing agent may pay the entire tax bill notwithstanding that such taxes pertain in part to other property and the Beneficiary shall be under no duty to seek a tax division or apportionment of the tax bill.

### 3.

#### UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

3.1 Security Agreement. This Deed of Trust shall constitute a security agreement as defined in the Uniform Commercial Code ("Code"). Any equipment or fixtures installed in or used in the Premises are to be used by the Grantor solely for Grantor's business purposes or as the equipment and fixtures leased or furnished by the Grantor, as landlord, to tenants of the Premises and such equipment or fixtures will be kept at the buildings on the Premises and will not be removed therefrom without the consent of the Beneficiary and may be affixed to such

J

buildings but will not be affixed to any other real estate. The remedies of the Beneficiary hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code shall not be construed as a waiver of any of the other rights of the Beneficiary including having any non-realty items of the Premises deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Premises is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Beneficiary. Neither the grant of a security interest pursuant to this Deed of Trust nor the filing of a financing statement pursuant to the Code shall ever impair the stated intention of this Deed of Trust that all Personal Property, Rents, Leases and Profits and Judgments and Awards comprising the Premises and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement. Grantor will on demand deliver all financing statements that may from time to time be required by Beneficiary to establish and perfect the priority of Beneficiary's security interest in the Premises and shall pay all expenses incurred by Beneficiary in connection with the renewal or extensions of any financing statements executed in connection with the Premises; and shall give advance written notice of any proposed change in Grantor's name, identity or structure and will execute and deliver to Beneficiary prior to or concurrently with such change all additional financing statements that Beneficiary may require to establish and perfect the priority of Beneficiary's security interest.

3.2 Authorization to File. Grantor expressly authorizes the Beneficiary to file any and all financing statements required to perfect any security interests hereunder without the debtor's signature. Grantor agrees to provide Beneficiary advance written notice of (i) any change of Grantor's name or (ii) any change of Grantor's jurisdiction.

3.3 Maintenance of Property. Subject to the provisions of this section, in any instance where Grantor in its sound discretion determines that any item subject to a security interest under this Deed of Trust has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Grantor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function, provided, that such removal and substitution shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of the Deed of Trust. Any amounts received or allowed Grantor upon the sale or other disposition of the removed items of property shall be applied first against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant from removing from the Premises trade fixtures, furniture and equipment installed by the tenant and removable by the tenant under its terms of the lease, on the condition, however, that the tenant shall at its own cost and expense, repair any and all damages to the Premises resulting from or caused by the removal thereof.

3.4 Grantor To Comply with Prior Security Instruments. Grantor shall at its sole cost and expense perform, comply with and discharge all obligations of Grantor under any prior

K

secured financing arrangements (whether lease purchase, conditional sales or pure lease arrangements) for any property subject to this security interest. Grantor shall not permit a surrender, assignment or transfer of its interest in any such property without the prior written consent of Beneficiary nor permit or suffer a default to exist under such prior financing arrangements.

3.5 Fixture Filing. THIS DEED OF TRUST SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING A PART OF THE PREMISES WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PREMISES. FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the record owner of the real estate described in this instrument is:

IRET PROPERTIES, A NORTH DAKOTA  
LIMITED PARTNERSHIP  
12 South Main Street  
Minot, North Dakota 58701  
Attn: General Counsel

- (b) the name and address of the Debtor is:

IRET PROPERTIES, A NORTH DAKOTA  
LIMITED PARTNERSHIP  
12 South Main Street  
Minot, North Dakota 58701  
Attn: General Counsel

- (c) the name and address of the Secured Party is:

Canada Life Insurance Company of America  
8515 E. Orchard Road, Suite 3T2  
Greenwood Village, CO 80111  
Attn: Mortgage Investments

- (d) Debtor's Organizational No. 12128600.
- (e) Information concerning the security interest evidence by this instrument may be obtained from the Secured Party at its address above.
- (f) This document covers goods which are or are to become fixtures.

4. APPLICATION OF INSURANCE AND AWARDS

4.1 Damage or Destruction of the Premises. Grantor shall give the Beneficiary prompt notice of any damage to or destruction of the Premises and in case of loss covered by policies of insurance the Beneficiary (whether before or after foreclosure sale) is hereby

L

authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom, provided, that the Grantor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of \$50,000.00, and further provided that so long as no Event of Default exists hereunder, Beneficiary shall not settle or adjust any such claim without the written consent of the Grantor, such consent not to be unreasonably withheld. Any expense incurred by the Beneficiary in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to the Beneficiary first out of any such proceeds. The proceeds or any part thereof shall be applied to reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, and conditioned upon there being no Event of Default, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary.

4.2 Condemnation. Grantor shall give the Beneficiary prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Premises and hereby assigns, transfers, and sets over to the Beneficiary the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Premises taken or damaged under such eminent domain or condemnation proceedings, the Beneficiary being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds provided, however, that so long as no Event of Default exists hereunder, Beneficiary shall not settle any such claim without the written agreement of the Grantor to join in such settlement, which agreement shall not be unreasonably withheld. Grantor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises or agreeing to a settlement unless prior written consent of Beneficiary is obtained. Any expenses incurred by the Beneficiary in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to the Beneficiary first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, and conditioned upon there being no Event of Default, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary.

4.3 Disbursement of Insurance and Condemnation Proceeds. Any restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to plans and specifications approved by the Beneficiary. In any case where Beneficiary may elect to apply the proceeds to repair or restoration or permit the Grantor to so apply the proceeds they shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Grantor shall on demand deposit with Beneficiary any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Beneficiary may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Beneficiary be applied on account of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, and conditioned upon there being no Event of Default, without

application of any prepayment premium or shall be returned to Grantor as its interest may appear, the choice of application to be solely at the discretion of Beneficiary.

5.

LEASES AND RENTS

5.1 Grantor to Comply with Leases. Grantor will, at its own cost and expense, perform, comply with and discharge all of the obligations of Grantor under any leases or agreements for the use of the Premises and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under any such leases and will appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with the Grantor's interest in any leases of the Premises. Grantor shall permit no surrender or assignment of any tenant's interest under said leases unless the right to assign or surrender is expressly reserved under the lease; nor shall Grantor accept any installment of rent for more than one month in advance of its due date or execute any deed of trust or create or permit a lien which may be or become superior to any such leases, or permit a subordination of any lease to such deed of trust or lien. Grantor will not modify or amend the terms of any such leases, or borrow against or pledge or assign the rentals from such leases, or excuse or waive any default of the tenant thereunder without the prior consent of Beneficiary.

5.2 Beneficiary's Right to Perform Under Leases. Should the Grantor fail to perform, comply with or discharge any obligations of Grantor under any lease or should the Beneficiary become aware of or be notified by any tenant under any lease of a failure on the part of Grantor to so perform, comply with or discharge its obligations under said lease, Beneficiary may, but shall not be obligated to, and without further demand upon the Grantor, and without waiving or releasing Grantor from any obligation in this Deed of Trust contained, remedy such failure, and the Grantor agrees to repay upon demand all sums incurred by the Beneficiary in remedying any such failure together with interest at the then rate in effect on the Note. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Grantor from any default hereunder.

5.3 Lease Approval. Each lease of the Premises which is for more than Five Thousand (5,000) square feet or for a term of more than five (5) years to be entered into by Grantor shall be approved by the Beneficiary and shall be satisfactory to the Beneficiary in form and content. New leases for less than Five Thousand (5,000) square feet and for a term of five (5) years or less made at market rates shall not require Beneficiary approval. Each such lease at the election of the Beneficiary will be either superior or subordinate to the lien of the Mortgage and each tenant shall execute an appropriate subordination or attornment agreement as required by the Beneficiary. Also, to the extent required by the Beneficiary, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its lease, all satisfactory in form and content to the Beneficiary. At least twenty (20) days prior to the execution of any new lease for a portion of the Premises in excess of Five Thousand (5,000) square feet, Grantor shall submit such proposed lease to Beneficiary for approval, which approval shall not be unreasonably withheld or delayed provided that:

- (i) following the execution of such lease the current annual gross income for the Premises shall be not less than Seven Hundred Sixty-one Thousand,

N

Three Hundred Ninety-five and 00/100 Dollars (\$761,395.00), from tenants of not more than ninety-one percent (91%) of the leasable space who are open for business, paying full rent without concessions, with leases in full force and effect;

- (ii) such lease does not alter the responsibility for payment of expenses from tenant to landlord;
- (iii) such lease is for a term of not more than five (5) nor less than three (3) years; and
- (iv) the form of the lease has previously been approved by the Beneficiary.

Grantor shall provide a copy of each and every new lease of the Premises or any part thereof to Beneficiary within twenty (20) days after the execution thereof.

5.4 Assignment of Leases and Rents. The Grantor does hereby sell, assign and transfer unto Beneficiary all of the leases, rents, income and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any agreement for the use or occupancy of the Premises, it being the intention of this Deed of Trust to establish an absolute transfer and assignment of all such leases and agreements and all of the rents and profits from the Premises unto the Beneficiary and the Grantor does hereby appoint irrevocably the Beneficiary its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, Beneficiary grants the Grantor the privilege, revocable, to collect and retain such rents, income, and profits unless and until an Event of Default exists under this Deed of Trust.

## 6.

### RIGHTS OF BENEFICIARY

6.1 Right to Cure Default. If the Grantor shall fail to comply with any of the covenants or obligations of this Deed of Trust, the Beneficiary may, but shall not be obligated to, without further notice to Grantor, and without waiving or releasing Grantor from any obligation in this Deed of Trust contained, remedy such failure, and the Grantor agrees to repay upon demand all sums incurred by the Beneficiary in remedying any such failure together with interest at the then rate in effect on the Note. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Grantor from any failure hereunder.

6.2 No Claim Against the Beneficiary. Nothing contained in this Deed of Trust shall constitute any consent or request by the Beneficiary, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Grantor or any party in interest with Grantor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Deed of Trust.

6.3 Inspection. Grantor will permit the Beneficiary's authorized representatives to enter the Premises at reasonable times for the purpose of inspecting the same; provided the Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

6.4 Waivers; Releases; Resort to Other Security, etc. Without affecting the liability of any party liable for payment of any Indebtedness Secured Hereby or performance of any obligation contained herein, and without affecting the rights of the Beneficiary with respect to any security not expressly released in writing, the Beneficiary may, at any time, and without notice to or the consent of the Grantor or any party in interest with the Premises or the Note:

- (a) release any person liable for payment of all or any part of the Indebtedness Secured Hereby or for performance of any obligation herein;
- (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness Secured Hereby or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof,
- (c) accept any additional security;
- (d) release or otherwise deal with any property, real or personal, including any or all of the Premises, including making partial releases of the Premises; or
- (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

6.5 Waiver of Appraisalment, Homestead, Marshaling. The Grantor waives to the full extent lawfully allowed the benefit of any homestead, appraisalment, evaluation, stay and extension laws now or hereafter in force. Grantor waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or require the Beneficiary to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel or as separate parcels.

## 7.

### EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. It shall be an Event of Default under this Deed of Trust upon the happening of any of the following:

- (a) any payment of principal or interest on the Note is not made when and as the same becomes due (whether at the stated maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise); or



P

- (b) failure to comply with or perform any of the other terms, conditions or covenants of the Note or of this Deed of Trust for a period of 30 days after written notice, specifying such failure, given to Grantor by Beneficiary, provided, however, that if such default cannot be cured in 30 days Grantor shall have such additional time up to but not more than 60 additional days as is needed to cure such default so long as Grantor is diligently proceeding to cure such default and Beneficiary, in its sole option, determines that such additional time will not impair or jeopardize the Premises or Grantor's interest therein; or
- (c) failure to pay when due any other Indebtedness Secured Hereby; or
- (d) the Grantor or any maker, guarantor or surety of the Note shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in voluntary bankruptcy or for an arrangement or reorganization pursuant to the Federal Bankruptcy Code ("Code") or any similar law, state or federal, now or hereafter existing ("Bankruptcy Proceeding"), or shall file an answer admitting insolvency or inability to pay or shall become insolvent as that term is defined in the Code or shall fail to pay its debts as they become due, or shall fail to obtain a vacation or stay of any involuntary Bankruptcy Proceeding within sixty (60) days after the institution of the same, or shall be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding, or shall have a custodian, trustee or receiver appointed for or have any court take jurisdiction of its property, or any part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, dissolution or liquidation and such custodian, trustee or receiver shall not be discharged or such jurisdiction not be relinquished, vacated or stayed within sixty (60) days; or
- (e) default in the performance of any terms, conditions or covenants of any other instrument securing the Note; or
- (f) a judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien or, be issued or levied against the Premises and shall not be released or fully bonded within sixty (60) days after its entry, issue or levy; or
- (g) any representation or warranty made by Grantor herein, in the Note or in any other instrument given as security for the Note shall be false, breached or dishonored; or
- (h) the Grantor, or any maker, guarantor or surety of the Note shall be adjudged incompetent or die and satisfactory provisions are not made for the substitution of the liability of said party's estate for the repayment of the Indebtedness Secured Hereby or the Grantor or any maker, guarantor or surety of the Note shall be dissolved, liquidated or wound up or shall fail to maintain its existence as a going concern in good standing.

Q

7.2 Beneficiary's Right to Accelerate. If an Event of Default shall occur the Beneficiary may declare the entire unpaid principal balance of the Note together with all other Indebtedness Secured Hereby to be immediately due and payable and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon and all other Indebtedness Secured Hereby shall be and become immediately due and payable.

7.3 Remedies. Beneficiary, at its option, may foreclose this Deed of Trust in the manner provided by law for the Foreclosure of Deeds of Trust on real property, or may cause the Premises to be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder. In the event that the Premises is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default, and notice of sale having been given as then required by law following recordation of such notice of default and election to sell such property. Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale be mailed to Grantor in the manner provided in the Nebraska Trust Deeds Act to the address set forth on Page 1 of this Deed of Trust. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, the Trustee without demand on the Grantor, shall sell the Premises, either in whole or in separate parcels, and in such order as it or the Beneficiary may determine at public auction to the highest bidder. The Trustee may postpone the sale of all or any portion of the Premises as allowed by law. The Trustee shall deliver to any purchaser at such sale its deed conveying the Premises so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including the Grantor, the Trustee or the Beneficiary, may purchase at such sale. The Trustee shall out of the proceeds arising from sale and foreclosure retain the principal and interest due on the Note and any other Indebtedness Secured Hereby together with all such sums of money as the Beneficiary and the Trustee shall have expended or advanced pursuant to this Deed of Trust or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure, including lawful attorney's fees and Trustee's fees not exceeding five percent (5%) of the amount realized at such sale, with the balance, if any, to be paid to the persons entitled thereto by law. It is further agreed that, if the Premises be advertised for sale as herein provided and not sold, the Grantor agrees to pay to Beneficiary all costs incurred thereby, including without limitation reasonable Trustee's fees for services rendered, advertising costs and reasonable attorneys' fees.

7.4 Receiver. If an Event of Default shall occur, the Beneficiary may, without notice, at its option, take one or more of the following actions:

- (a) take possession of the Premises;
- (b) manage the same to or for the account of the Grantor;
- (c) collect all income and profits arising from the Premises and deduct from income, profits and rents all expenses and apply the remainder to the Indebtedness Secured Hereby; or

R

- (d) have a receiver appointed by a court of competent jurisdiction to take possession of the Premises and collect the rents, issues and profits arising from the Premises deducting therefrom any and all sums spent by any such receiver together with the receiver's own compensation. Beneficiary's right to a receiver shall be absolute and unconditional once an Event of Default occurs and said receiver may be obtained in any judicial foreclosure, suit for specific performance or in any other law suit to enforce this Deed of Trust in any manner. This right is created by this Deed of Trust and is a contractual right between the parties and is cumulative of and shall not affect in any way the right of the Beneficiary given by law for the appointment of a receiver.

7.5 The Beneficiary's Right Of Possession Upon An Event Of Default. In any case in which under the provisions of this Deed of Trust the Beneficiary has a right to institute a trustee's sale or foreclosure proceedings, whether before or after the whole Indebtedness Secured Hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith upon demand of the Beneficiary, the Grantor shall surrender to the Beneficiary and the Beneficiary shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and the Beneficiary in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of the Grantor or then owners of the Premises relating thereto, and may exclude the Grantor or its agent or servants, wholly therefrom and may, as attorney-in-fact or agent of the Grantor, or in its own name as the Beneficiary and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, if an available remedy, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Grantor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Grantor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Deed of Trust or subordinated to the lien hereof unless Beneficiary has entered into a non-disturbance agreement with such tenant, to make all necessary or proper repairs, betterments and improvements to the Premises as to it may seem judicious, insure and reinsure the same and all risks incidental to the Beneficiary's possession, operation and management thereof and to receive all of such avails, rents, issues and profits. The Beneficiary shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases and the Grantor shall and does hereby agree to indemnify and hold the Beneficiary and Trustee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Beneficiary incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including

5

costs, expenses and reasonable attorneys' fees shall be secured hereby, and the Grantor shall reimburse the Beneficiary therefore immediately upon demand.

7.6 Application Of Income Received By The Beneficiary. The Beneficiary in the exercise of the rights and powers hereinabove conferred upon it shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Beneficiary may determine:

- (a) to the payment of the reasonable operating expenses of said Premises, including cost of management and leasing thereof (which shall include reasonable compensation to the Beneficiary and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on said Premises;
- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements reasonably necessary for the continued operation of said Premises, including the cost from time to time of installing or replacing refrigeration and gas or electric heating therein, and of placing said property in such condition as will, in the judgment of the Beneficiary, make it readily rentable;
- (d) to the payment of any Indebtedness Secured Hereby or any deficiency which may result from any foreclosure sale;

the remainder to be paid to the Grantor or as may be required by law.

7.7 Rights Under Uniform Commercial Code. In addition to the rights available to a mortgagee of real property, Beneficiary shall also have all the rights, remedies and recourse available to a secured party under the Uniform Commercial Code including the right to proceed under the provisions of the Uniform Commercial Code governing default as to any property which is subject to the security interest created by the Deed of Trust or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

7.8 Due on Sale or Mortgaging, etc. In the event of a Transfer without the written consent of the Beneficiary being first obtained, whether voluntarily, involuntarily, or by operation of law, then at the sole option of the Beneficiary (which the Beneficiary may withhold in its sole discretion), the Beneficiary may declare the entire unpaid Principal balance, together with accrued interest, due and payable in full together with the Premium due on the Note at the time of and in the same amount as if the Grantor had voluntarily prepaid the Note. A consent by the Beneficiary as to any one Transfer shall not be deemed to be a waiver of the right to require consent to a future Transfer. As used herein, the term "Transfer" shall include any sale, pledge, assignment, mortgage, encumbrance, security interest, consensual lien, hypothecation, transfer or

T

divesture, i) of the Premises, ii) of the Grantor, iii) of an interest in the Grantor, or iv) of an interest in any entity in direct or indirect control of the Grantor, either directly or indirectly, whether voluntarily, involuntarily or by operation of law, including an interest taken as security. Provided that as long as (i) the Grantor remains as the operating partnership of Investors Real Estate Trust, a North Dakota real estate investment trust (the "Indemnitor"), (ii) the Indemnitor continues to be a publicly traded real estate investment trust, and (iii) IRET, Inc., continues to be the sole general partner of the Grantor with not less than a fifty-one percent (51%) controlling ownership interest therein, the foregoing requirement to obtain Beneficiary's written consent and pay any otherwise applicable Transfer fee shall not apply to (aa) Transfers of the publicly traded shares of the Indemnitor, (bb) Transfers of limited partnership interests in the Grantor or (cc) Transfers which result in a change in the percentage interest of IRET, Inc., in the Grantor.

The foregoing prohibition notwithstanding, so long as no Default exists hereunder, Grantor may on one occasion only Transfer all of the Premises to a third party subject to satisfaction of the following conditions: (a) payment of a Transfer fee equal to 1% of the then outstanding Loan balance; (b) Beneficiary's approval of the transferee's creditworthiness and experience in owning and managing real estate similar to the Premises; (c) assumption by the transferee of all obligations under the Note, the Deed of Trust and the other Loan Documents; (d) payment of Beneficiary's out of pocket expenses in connection with the Transfer; and (e) Beneficiary's receipt and approval of such searches, title endorsements, affidavits, updated surveys and such other information and documents as Beneficiary may request.

Any consent by the Beneficiary permitting a Transfer otherwise prohibited under this clause shall not constitute a consent to or waiver of any right, remedy or power of the Beneficiary to withhold its consent on a subsequent occasion to a Transfer not otherwise permitted by the provisions of this clause. Further, no Transfer shall release the Grantor from its obligations hereunder or under any of the other Loan Documents and in the event of an approved or allowed Transfer, the Grantor shall execute and deliver such reaffirmation of its obligations as the Beneficiary may require.

As a condition to consideration of a request for consent, the Grantor shall pay to the Beneficiary a transfer fee equal to one percent (1%) of the then unpaid balance due hereunder ("Assumption Fee") and the Beneficiary may, among other things, require an assumption of the indebtedness evidenced by this Mortgage, a change in the terms of payment and the payment of Beneficiary's out-of-pocket costs incurred with respect to any consent. As a further condition to such consent, any transferee or such other person(s) as deemed appropriate by the Beneficiary and its counsel shall execute and deliver an assumption agreement, in form and substance satisfactory to the Beneficiary, which shall include without limitation a specific assumption of the personal liabilities of the Grantor as set forth in paragraphs 17 and 18 of the Note; an executed environmental indemnification agreement and a recourse carve-out guaranty from the transferee and such other persons as deemed appropriate by Beneficiary and Beneficiary's counsel all in form and content satisfactory to Beneficiary and Beneficiary's legal counsel, including, without limitation, proof of entity authority and signatory capacity, amendments to financing statements and endorsements to the Beneficiary's policy of title insurance and a copy of the deed or other instrument or document conveying title to the Premises pursuant to such consent shall be provided to the Beneficiary forthwith upon closing of the transaction. Each request for consent to a Transfer shall be accompanied by the Assumption Fee and in the event the Beneficiary

U

declines to give consent, the Assumption Fee less a non-refundable processing fee in the amount of Three Thousand Hundred and 00/100 Dollars (\$3,000.00) shall be reimbursed to the Grantor.

In connection with any Transfer approved by the Beneficiary, the Grantor or the Transferee shall pay all of Beneficiary's out-of-pocket expenses relating thereto, including but not limited to reasonable attorney's fees and expenses and an endorsement to Beneficiary's policy of title insurance. Further, Beneficiary may impose such reasonable requirements in connection with any Transfer as Beneficiary shall deem necessary to assure the enforceability and continued perfection of the lien and security interest of the Deed of Trust and other Loan Documents securing this Mortgage. As a further condition to its consent to a Transfer, Beneficiary at its sole option, may require a current, as of the time of such Transfer, environmental assessment report or an update of the otherwise then most current environmental assessment report for the Premises.

Grantor shall promptly notify Beneficiary of the occurrence of any of the events specified in this Paragraph 7.8, and provide Beneficiary with copies of such documentation evidencing the Transfer as Beneficiary shall request. Any consent by Beneficiary permitting a Transfer otherwise prohibited under this Paragraph 7.8 shall not constitute a consent to or waiver of any right, remedy or power of Beneficiary to withhold its consent on a subsequent occasion to a Transfer not otherwise permitted by the provisions of this Paragraph 7.8.

7.9 Rights Cumulative. Each right, power or remedy herein conferred upon the Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Beneficiary, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Beneficiary and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Beneficiary in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Beneficiary to resort thereto at a later date or be construed to be a waiver of any default or Event of Default under this Deed of Trust or the Note.

7.10 Right to Discontinue Proceedings. In the event Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under this Deed of Trust and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and in such event Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness Secured Hereby. This Deed of Trust, the Premises and all rights, remedies and recourse of the Beneficiary shall continue as if the same had not been invoked.

V

8.  
MISCELLANEOUS

8.1 Release of Deed of Trust. When all Indebtedness Secured Hereby has been paid, this Deed of Trust and all assignments herein contained shall be void and this Deed of Trust shall be released by the Beneficiary at the cost and expense of the Grantor, otherwise to remain in full force and effect.

8.2 Choice of Law. This Deed of Trust is made and executed under the laws of the State of Nebraska and is intended to be governed by the laws of said State.

8.3 Successors and Assigns. This Deed of Trust and each and every covenant, agreement and other provision hereof shall be binding upon the Grantor and its successors and assigns including without limitation each and every record owner of the Premises or any other person having an interest therein from time to time, shall run with the land and shall inure to the benefit of the Beneficiary and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is or becomes a party to this Deed of Trust. In the event that the ownership of the Premises becomes vested in a person or persons other than the Grantor, the Beneficiary shall not have any obligation to deal with such successor or successors in interest unless such transfer is permitted by this Deed of Trust and then only upon being notified in writing of such change of ownership. Upon such notification, the Beneficiary may thereafter deal with such successor in place of Grantor without any obligation to thereafter deal with Grantor and without waiving any liability of Grantor hereunder or under the Note. No change of ownership shall in any way operate to release or discharge the liability of the Grantor hereunder unless such release or discharge is expressly agreed to in writing by the Beneficiary.

8.4 Unenforceability of Certain Clauses. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

8.5 Captions and Headings. The captions and headings of the various sections of this Deed of Trust are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

8.6 Notices. Any notices and other communications permitted or required by the provisions of this Deed of Trust (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective upon being deposited or delivered as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be

W

receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Beneficiary shall be addressed as follows:

CANADA LIFE INSURANCE COMPANY OF AMERICA  
8515 E. Orchard Road, Suite 3T2  
Greenwood Village, CO 80111  
Attn: Mortgage Investments

Each notice to Grantor shall be addressed as follows:

IRET PROPERTIES, A NORTH DAKOTA  
LIMITED PARTNERSHIP  
12 South Main Street  
Minot, North Dakota 58701  
Attn: General Counsel


8.7 Substitution of Trustee. Beneficiary may remove Trustee at any time or from time to time, with or without cause, and appoint a successor trustee, and upon such appointment, all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall be appointed by written instrument duly recorded in the county or counties where the real property covered hereby is located, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

8.8 Request for Notice. Grantor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

8.9 Limited Liability. The Grantor shall not be personally liable for the payment of the Note, provided this limitation of liability shall not prejudice the right of the Beneficiary to enforce or foreclose the Loan Documents or to exercise any of its remedies at law including effecting a sale of the Premises in accordance with the Deed of Trust or foreclosing the Deed of Trust and in furtherance thereof naming the Grantor as a party defendant in any action or proceeding to enforce the same other than the entry of a money judgment personally enforceable against the Grantor. Notwithstanding the foregoing, the Grantor shall not be exonerated or exculpated for any loss or deficiency suffered or sustained by the Beneficiary as a result of:

- (a) any obligation, loss or liability which may arise out of or under the Indemnity of even date herewith executed by the Grantor and Indemnitor to the Beneficiary;
- (b) the application or enforcement of any law, governmental standard or regulation applicable to the Grantor and/or its members with respect to the Premises and/or the Premises with respect to hazardous waste or environmental impairment ("Environmental Laws") or a misrepresentation of the Grantor or its members with respect to the same;



- 
- (c) application or enforcement of any law, governmental standard or regulation applicable to the Grantor or its members with respect to the Premises and/or the Premises with respect to the Fair Housing Amendments Act of 1988, the Americans With Disabilities Act of 1990 (ADA) or with any federal, state or local statute or regulation as each may have been amended from time to time pertaining to the providing of access to the Premises to persons with disabilities or to the removal of existing barriers to access by such individuals to the Premises ("Handicap Access Law") or a misrepresentation of the Grantor or its members with respect to the same;
  - (d) failure to deliver to the Beneficiary any rents or other income generated at or by the Premises and received by the Grantor subsequent to a Default or at any time within the twelve (12) month period preceding such Default to the extent that such rents or other income have not been applied to the payments due hereunder, real estate taxes, insurance or other operating expenses directly attributable to the Premises;
  - (e) failure by the Grantor to deliver to the Beneficiary all security deposits or similar deposits or guarantees and any prepayment of rents made by Tenants or other occupants of the Premises;
  - (f) any misappropriation or misapplication by the Grantor of insurance proceeds or condemnation awards in violation of the terms hereof or of the Note;
  - (g) failure by the Grantor, to pay real estate taxes, insurance premiums, charges for labor or materials, or any and all other charges which may create a lien on the Premises or any part thereof incurred during the time that the Grantor has control thereof;
  - (h) any fraud, misrepresentation or breach of warranty by the Grantor or any Indemnitor in any instrument or document relating to the Loan evidenced by the Note;
  - (i) amounts necessary to repair or replace any damage to the Premises caused by the willful or wanton act or omission of the Grantor or any Indemnitor;
  - (j) any Transfer of the Premises not otherwise permitted under the terms of any of the Loan Documents without the express prior written consent of the Beneficiary where required;
  - k. failure by the Grantor to comply with the terms, covenants and conditions, other than the monthly payment of principal and interest, of the Loan Documents; and
  - (k) costs and expenses including reasonable attorneys fees incurred by the Beneficiary in connection with collection of any amounts due or enforcement of any other rights of Beneficiary with respect to the foregoing exceptions to the exculpation provisions hereof, whether or not suit is filed with respect thereto and whether or not the Beneficiary prevails therein.

Y

8.10 Full Liability. Notwithstanding the provisions of paragraph 17 of the Note or paragraph 8.9 hereof, the provisions of said paragraph 17 and paragraph 8.9 shall not apply and the Grantor shall be absolutely and unconditionally liable for the payment and performance of the Note if the Grantor or the Guarantor shall materially delay any foreclosure of the Deed of Trust or the exercise of any other remedies available to the Beneficiary under the Note, this Deed of Trust, or any other Loan Documents, or if the Grantor or the Guarantor shall claim that any Loan Document is invalid or unenforceable to an extent that would preclude any such foreclosure or other exercise of remedies. The foregoing shall include, but is not limited to, the Grantor or the Guarantor filing a petition in bankruptcy or a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the bankruptcy laws of the United States or under any other similar federal, state or other statute relating to relief from indebtedness, whether filed by or against the Grantor or such Guarantor, or should a receiver, trustee or liquidator be approved with respect to the Grantor, the Guarantor or the Premises or any part thereof.

8.11 Costs and Expenses. The Grantor agrees to pay on demand all costs and expenses of the Beneficiary, including but not limited to reasonable attorneys fees and costs, environmental audit and appraisal fees and costs, incurred by the Beneficiary in connection with the enforcement of this Deed of Trust and the collection of the Indebtedness Secured Hereby.

8.12 Waivers. To the fullest extent permitted by law, Grantor hereby waives (i) any right to a hearing or notice of such hearing, except as may now or hereafter be required under Nebraska law in connection with the foreclosure of this Deed of Trust securing the Note; (ii) any right of redemption of foreclosure of this Deed of Trust; (iii) the protection afforded by the automatic stay provisions of Section 362 of the United States Bankruptcy Code; (iv) any rights under Nebraska law with regard to election of remedies or restrictions, on deficiency judgments; or (v) any prohibition with respect to a confession of judgment by the Grantor prior to a Default.

8.13 Waiver of Jury Trial.

NO PARTY TO THIS DEED OF TRUST OR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE OF A PARTY SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEEDINGS BASED UPON OR ARISING OUT OF THIS DEED OF TRUST, ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

8.14 Credit Agreement Notice. A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or

Z

disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

TJJ  
Grantor's Initials

**[SIGNATURE PAGE TO FOLLOW]**

Aa

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed as of the date first above written.

IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP

By: IRET, INC., a North Dakota corporation

By: [Signature]  
Thomas A. Wentz, Jr.

Its Senior Vice President

Its: Sole General Partner

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF WARD             )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2005, by Thomas A. Wentz, Jr., the Senior Vice President of IRET, INC., a North Dakota corporation, the Sole General Partner of IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP, on behalf of the limited partnership.

**JO E BOYKO**  
Notary Public  
State of North Dakota  
My Commission Expires Nov. 22, 2010

[Signature]  
Notary Public

Ab

Beneficiary's copy of  
Tax statements for the real  
property described in this  
instrument should be sent to:

Canada Life Insurance Company of America/  
8515 E. Orchard Road, Suite 3T2  
Greenwood Village, CO 80111  
Attn: Mortgage Investments

THIS DOCUMENT WAS DRAFTED BY:

BEST & FLANAGAN LLP  
225 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-4331  
(612) 339-7121

2005-45964Ac

**EXHIBIT A**  
**MORTGAGE**  
**AND**  
**SECURITY AGREEMENT**  
**AND**  
**FIXTURE FINANCING STATEMENT**

The South 405 feet of Lot 24, Brook Valley Business Park, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, AKA Lot 24, Brook Valley Business Park, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, except the North 45 feet thereof, AKA Lot 24A, Brook Valley Business Park, a Subdivision as surveyed, platted and recorded in Sarpy County Nebraska.

Lot 4, in Spring Valley Industrial Park, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Lot 10, in Spring Valley Industrial Park, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Lot 11, Spring Valley Industrial Park, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Lots 1 and 2, Spring Valley Industrial Park Replat 5, an administrative subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

000000/000002/407137\_2