

2016-31249

12/02/2016 9:40:01 AM

*Lloyd J. Dowding*

REGISTER OF DEEDS

COUNTER	<i>ah</i>	C.E.	<i>P</i>
VERIFY	<i>ah</i>	DE	<i>P</i>
PROOF	<i>ah</i>		
FEES \$	<i>106.00</i>		
CHECK #	<i>23620</i>	<i>23623</i>	
CHG		CASH	
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FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, # 1230

PAPILLION, NE 68046-2842

402-593-5773

*R&R  
TITLECORE  
NATIONAL*

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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 1<sup>st</sup> day of December, 2016, by LA VISTA CITY CENTRE, LLC, a Nebraska limited liability company, as assignor, having its designated offices at 16755 Frances Street, Omaha, Nebraska 68130 and PO Box 428, Boys Town, Nebraska 68010 (together with its permitted successors and assigns, "Borrower") to Dundee Bank, a branch of Security State Bank, a Nebraska banking corporation, as assignee, having an address at 5015 Underwood, Omaha, NE 68132 (together with its successors and assigns, "Lender").

W I T N E S S E T H:

WHEREAS, this Assignment is given in connection with an operating line of credit in the principal sum of ONE MILLION TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$1,200,000.00) (the "Loan") made by Lender to Borrower pursuant to certain loan documents dated as of the date hereof including, but not limited to, guarantees, promissory note, and a commercial loan agreement (as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, hereinafter all collectively referred to as the "Loan Documents") and which debt is evidenced specifically by that certain Promissory Note, dated the date hereof, given by Borrower to Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Note");

WHEREAS, Borrower desires to secure the payment of the Loan and the performance of all of its obligations under the Note and the Loan Documents; and

WHEREAS, this Assignment is given pursuant to the Loan Documents and Note, and payment, fulfillment, and performance by Borrower of its obligations thereunder is secured hereby, and each and every term and provision of the Loan Documents and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties therein, are

hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Assignment.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Assignment:

ARTICLE 1 - ASSIGNMENT

Section 1.1 Property Assigned. Borrower hereby absolutely and unconditionally assigns and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) Leases. All leases, subleases, sub-subleases, licenses, franchises, concessions or grants of other possessory interests, tenancies, and any other agreements (in each case whether oral or written) affecting the use, possession or occupancy of any space in that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Property") or any part thereof (including, without limitation, restaurants and bars), whether now or hereafter existing or entered into (including, without limitation, any use or occupancy arrangements created pursuant to Section 365(d) of the Bankruptcy Code (defined below) or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Property) and every modification, amendment or other agreement relating to the foregoing and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

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(b) Other Leases and Agreements. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The "leases" described in Subsection 1.1(a) and the leases and other agreements described in this Subsection 1.1(b) are collectively referred to as the "Leases".

(c) Rents. All rents, issues, profits, royalties (including all oil and gas or other hydrocarbon substances), earnings, receipts, revenues, accounts, account receivable, security deposits and other deposits (subject to the prior right of the tenants making such deposits) and income, including, without limitation, fixed, additional and percentage rents, and all operating expense reimbursements, reimbursements for increases in taxes, sums paid by tenants to Borrower to reimburse Borrower for amounts originally paid or to be paid by Borrower or Borrower's agents or affiliates for which such tenants were liable, such as, for example, tenant improvements costs in excess of any work letter, lease takeover costs, moving expenses and tax and operating expense pass-throughs for which a tenant is solely liable, parking, maintenance, common area, tax, insurance, utility and service charges and contributions, proceeds of sale of electricity, gas, heating, air-conditioning and other utilities and services, deficiency rents and liquidated damages, and other benefits now or hereafter derived from any portion of the Property or otherwise due and payable or to become due and payable as a result of any ownership, use, possession, occupancy or operation thereof and/or services rendered, goods provided and business conducted in connection therewith (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any

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tenant or other occupants of any portion of the Property and all claims as a creditor in connection with any of the foregoing) and all cash or security deposits, advance rentals, and all deposits or payments of a similar nature relating thereto, now or hereafter, including during any period of redemption, derived from the Property or any portion thereof and all proceeds from the cancellation, surrender, sale or other disposition of the Leases (collectively, the "Rents").

(d) Bankruptcy Claims. All of Borrower's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(e) [INTENTIONALLY DELETED]

(f) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, and the Bankruptcy Claims.

(g) Other. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases, including without limitation the immediate and continuing right to make claim for, receive and collect all Rents payable or receivable under the Leases (and to apply the same to the payment of the Loan), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases.

(h) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(i) Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(j) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in

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subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

## ARTICLE 2 - TERMS OF ASSIGNMENT

Section 2.1 Present Assignment And License Back. It is intended by Borrower that this Assignment constitute a present, absolute assignment of the Leases, Rents and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents and other sums due under the Leases and to otherwise have and possess all rights and obligations with respect to the Leases and Borrower shall hold such Rents and all other sums or a portion thereof sufficient to discharge all current sums due on the Loan, in trust for the benefit of Lender for use in the payment of the then current sums due on the Loan. Borrower shall not collect in advance any Rents and other sums due in future lease periods (other than security deposits) unless Borrower first obtains Lender's written consent.

Section 2.2 Notice To Lessees. Borrower hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Property to pay over to Lender or to such other party as Lender directs all Rents and all sums due upon receipt from Lender of written notice to the effect that Lender is then the holder of this Assignment and that an Event of Default (as defined in the Loan Documents) exists, and to continue so to do until otherwise notified by Lender. Immediately after the execution of this Assignment, Borrower will notify all current and future tenants and others obligated under the Leases of Lender's rights to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Borrower or Lender directs in writing for them to do so.

Section 2.3 Incorporation By Reference. All representations, warranties, covenants, conditions and agreements contained in the Loan Documents as the same may

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be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

### ARTICLE 3 - REMEDIES

Section 3.1 Remedies of Lender. Upon or at any time after the occurrence of an Event of Default, the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Event of Default, without regard to the adequacy of the security for the Loan, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as Lender may deem proper and may apply the Rents and sums received to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements,

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and all expenses incident to taking and retaining possession of the Property; and (b) the Loan, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of an Event of Default, Lender, at its option, may (i) complete any construction on the Property in such manner and form as Lender deems advisable, (ii) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify any Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due, (iii) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (iv) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 3.2 Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Documents or the Note and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Loan and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, the Loan Documents, the Note, or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Documents, or the Note (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor



shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding, nor shall the foregoing be deemed a waiver of any liability arising solely from Lender's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction).

Section 3.3 Other Security. Lender may take or release other security for the payment of the Loan, may release any party primarily or secondarily liable therefor and may apply any other security held by it that secures the Loan to the reduction or satisfaction of the Loan without prejudice to any of its rights under this Assignment. Notwithstanding anything herein to the contrary, Lender may not apply any other security held by it to the reduction or satisfaction of the Loan other than security that specifically secures the Loan.

Section 3.4 Non-Waiver. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and sums due and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Note, the Loan Documents, the Leases, or this Assignment. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Loan Documents or the Note, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Loan Documents or the Note. Lender may resort for the payment of the Loan to any other security held by Lender that secures the Loan in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Loan, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender

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thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5 Bankruptcy.

(a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4 - NO LIABILITY, FURTHER ASSURANCES

Section 4.1 No Liability of Lender. This Assignment shall not be construed to bind Lender to the performance of any

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of the covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the gross negligence, willful misconduct and/or bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Borrower shall, and hereby agrees to, indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases other than those finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct or bad faith of Lender. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment, the Note and the Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment, the Note and the Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property including, without limitation, the presence of any unlawful hazardous substances, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger other than those finally determined by a court of competent jurisdiction to

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have resulted solely from the gross negligence or willful misconduct of Lender.

Section 4.2 No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.3 Further Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, within fifteen (15) days of demand, will execute and deliver and, to the extent not returned within fifteen (15) days of demand, hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

#### ARTICLE 5 - MISCELLANEOUS PROVISIONS

Section 5.1 Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Loan Documents, the terms of the Loan Documents shall prevail other than with respect to capitalized terms defined herein.

Section 5.2 No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by

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any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by Lender and by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought (as applicable).

Section 5.3 General Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Documents. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof," the word "Lender" shall mean "Lender and any subsequent holder of the Note, , the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include reasonable attorney, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.4 Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 5.5 Governing Law. This Assignment shall be governed in accordance with the terms and provisions of Nebraska law.

Section 5.6 Termination of Assignment. Upon payment in full of the Loan, this Assignment shall automatically become and be void and of no effect.

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Section 5.7 Notices. All notices or other written communications hereunder shall be delivered by giving notice at the following addresses:

If to Borrower:

La Vista City Centre, LLC  
16755 Frances St.  
Omaha, NE 68130

with a copy to:

La Vista City Centre, LLC  
PO Box 428  
Boys Town, NE 68010

with a copy to:

Dvorak & Donovan Law Group, LLC  
13625 California St., Ste. 110  
Omaha, NE 68154  
Attn: Kendra J. Ringenberg

If to Lender:

DUNDEE BANK, a branch of Security State Bank  
5015 Underwood Ave.  
Omaha, NE 68132

Section 5.8 Waiver of Trial by Jury. **BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT, THE Loan Documents OR THE NOTE OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

Section 5.9 Successors and Assigns, Recording. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever. Lender has the right to sell, transfer, assign or otherwise dispose of its rights, obligations and/or interest in the Loan, including, without limitation, this Assignment at Lender's cost and upon notice to Borrower. Lender may record this Assignment, or a

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memorandum thereof, in the real estate records of the County where the Property is situated.

Section 5.10           Headings, Etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 5.11           Lease Modification. Borrower will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's written consent, such consent not to be unreasonably withheld. If Lender fails to respond to the proposed change within fifteen (15) days of receipt of the proposed change, then Lender shall be deemed to have approved.

Section 5.12           Encumbrance. Borrower will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.

Section 5.13           Prosecution and Defense of Claims. Borrower will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Borrower's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against Parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.

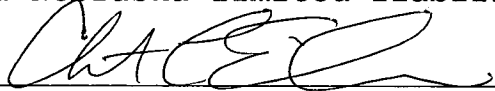
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IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

BORROWER:

La Vista City Centre, LLC  
a Nebraska limited liability company



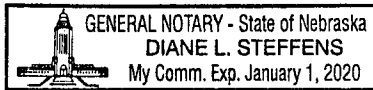
By: Christopher L. Erickson  
Its: Manager

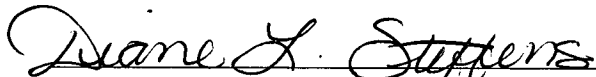
ACKNOWLEDGMENT

State of Nebraska )

County of Douglas )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of December, 2016, by Christopher L. Erickson, Manager for and on behalf of La Vista City Centre, LLC, a Nebraska limited liability company.



  
Notary Public



2016-31249 P

EXHIBIT A  
(Legal Description of Property)

Lot 2, La Vista City Centre, an addition to the City of La Vista, as surveyed, platted and recorded in Sarpy County, Nebraska.

