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CO-TENANCY AGREEMENT – CROSSROADS CORNER

We, 45 Del Oro, LLC, Cook Dodge, LLC, and Constance Dodge, LLC, all duly formed and operating California Limited Liability Companies (“tenants”), enter into this Co-Tenancy Agreement (“agreement”) relating to our anticipated co-ownership of certain real estate described in Exhibit A (the “property”).

RECITALS

A. WHEREAS, each of the tenants intends to purchase an undivided interest in the real property legally described in Exhibit A, commonly known as Crossroads Corner, as a qualifying replacement property pursuant to Internal Revenue Code Section 1031;

B. WHEREAS, the tenants intend to co-own the property as a Tenancy in Common (“TIC”) for investment purposes;

C. WHEREAS, the tenants wish to establish rules governing shared ownership of and benefits in the property to minimize disputes and to provide an orderly and efficient operation of the property for mutual benefit;

NOW, THEREFORE, we agree as follows:

AGREEMENTS

SECTION 1. ORGANIZATIONAL MATTERS

1.1. Co-Ownership Unaffected. This agreement shall not convert our interests in the property into anything other than TIC interests in the property.

1.2. Undivided Ownership. The tenants recognize that none of them will individually own any particular portion of the property, or obtain a deeded right to exclusive occupancy or control of any particular portion of the property. Instead, each will own an undivided interest in the entire property, and occupants who are not tenants may hold any of them responsible for any or all of the obligations and liabilities associated with ownership of the property.

1.3. Partnership Not Intended. This agreement is not intended to create a partnership, joint venture, or subdivision under any state or local statute, ordinance, regulation, or other applicable law, but rather to describe the terms and conditions under which each tenant will hold its undivided interest in the property. No tenant is authorized to act as the agent for or on behalf of any other tenant, to do any act which would bind another tenant, or to incur any expenditures with respect to the property except as expressly provided in this agreement.

1.4. Partition Rights Preserved. The tenants do not wish to alter their rights under applicable state law to seek partition of the property except as expressly provided in this agreement.

1.5 Encumbrance Rights Preserved. The tenants do not wish to alter their rights to encumber the property except as expressly provided in this agreement.

1.6. Tenant Shares. The tenants wish to allocate ownership and control of the TIC in discrete shares, each of which may be owned by an individual or a group. If a group owns a share, the group shall be treated as a single tenant and each of its members shall be jointly and severally liable for all obligations and responsibilities of the tenant.

1.7. Percentage Ownership Interests. As of the date of this agreement, the tenants' percentage ownership interests are to be:

45 Del Oro, LLC	50%
Cook Dodge, LLC	25%
Constance Dodge, LLC	25%

SECTION 2 – EXPENSES AND INCOME

2.1. Expense Allocations. Each tenant shall be responsible for a *pro rata* share of the expenses of ownership and operation of the property. These expenses shall include:

- 2.1.1. Shared Mortgage
- 2.1.2. Property Taxes
- 2.1.3. Insurance Costs
- 2.1.4. Maintenance, Repair, and Improvement Costs
- 2.1.5. Utility Costs
- 2.1.6. Property Management and Rental Expenses
- 2.1.7. Accounting Expenses
- 2.1.8. Other Expenses

2.2. Method of Payment. Each tenant shall pay its share of expenses as part of its regular monthly assessment or as part of special assessments, as both terms are defined in Section 3 of this agreement.

2.3. Income Allocations. Each tenant shall be entitled to a *pro rata* share of the income to the TIC from ownership and operation of the property. The accounts manager shall disburse such income monthly after withholding sufficient funds to cover the tenant's regular monthly assessment and any special assessments.

SECTION 3 – ASSESSMENTS AND ACCOUNTS

3.1. Operating Budget. Each year, the tenants' accounts manager shall create a *pro forma* operating budget describing the anticipated funding requirements of the TIC. This operating budget shall include normal operating expenses as well as reserves, which shall provide an accumulating fund for major maintenance, repair, and improvement costs.

3.1.1. Operating Expenses. Each year, the tenants shall estimate the annual cost of each of the operating expenses based on the best available information.

3.1.2. Reserves. Each year, the tenants shall estimate the remaining useful life to each major component of the property which the TIC is obligated to maintain. Only those components with a remaining useful life of less than fifteen years shall be included in the computation of the reserves. To establish the reserve required for each such component, the tenants shall (1) estimate the component's replacement cost, (2) subtract any amounts currently in TIC accounts ear-marked toward its replacement, and (3) divide the difference by the remaining years of useful life.

3.1.3. Creation and Approval. The tenants shall adopt an operating budget for the remainder of the year in which this agreement is executed, within fourteen days of the close of escrow on the property, and for each subsequent year, between forty-five and sixty days before the beginning of the year. The accounts manager shall prepare a draft operating budget and circulate it to the tenants for approval. No tenant shall unreasonably withhold its approval of such budget, and such budget shall be adopted if approved by a majority of tenants.

3.1.4. Adjustments. If, during the year, the accounts manager determines that the operating budget is inadequate or excessive, the existing budget may be revised and circulated for approval by the tenants, which approval shall not be unreasonably withheld.

3.2. Regular Monthly Assessments. Each tenant's share of the operating budget shall be divided into equal monthly payments, and the accounts manager shall notify each tenant of the amount of the regular monthly assessment upon distribution of the operating budget or revised operating budget. Each tenant's regular monthly assessment shall be due to the accounts manager no later than the first day of each month.

3.3. Special Assessments. The accounts manager or any tenant may propose a special assessment to cover unanticipated TIC expenses. A majority of tenants must approve any special assessment. If a special assessment is approved, the accounts manager shall prepare and deliver to each tenant a statement of the amount due and the due date.

3.4. Operating Account. No later than thirty days from the close of escrow on the property, the accounts manager shall open an operating account at a federally

insured bank, and shall deposit each tenant's initial regular monthly assessment. Each cotenant and the accounts manager shall be a signatory to this account.

3.4.1. Disbursements. The accounts manager may make disbursements from the operating account to cover approved TIC expenses.

3.4.2. Withdrawals. Funds may be withdrawn from this account only for approved disbursements. A tenant's transfer of its interest will not entitle the tenant to withdraw funds from the operating account.

SECTION 4 – MANAGEMENT

4.1. **General Terms.** Any sale, lease, or re-lease of all or a portion of the property, any negotiation or renegotiation of indebtedness secured by a blanket lien on the property, the hiring of any manager, and/or the negotiation of any management contract (or any extension or renewal of such contract) must be by unanimous approval of the tenants.

4.2. **Property Manager.** The tenants shall employ or appoint a property manager to interface with occupants of the property on behalf of the tenants.

4.2.1. Regular Cleaning and Maintenance. The property manager shall be responsible for arranging regular cleaning and maintenance, including gardening services, as to those areas of the property for which the TIC has such responsibility.

4.2.2. Premises Problems. The property manager shall be responsible for inspecting and confirming reported problems. In the event a problem can be corrected for less than \$500.00, the property manager shall have authority to arrange and pay for any repair out of TIC funds. In the event the problem cannot be corrected for less than \$500.00, the property manager shall obtain at least two bids which shall be presented to the tenants for selection.

4.2.3. Lease Enforcement. The property manager shall be responsible for enforcing the terms of the occupants' leases and for collecting from the occupants rents, expense contributions, and other funds due pursuant to those leases. The property manager shall promptly notify the tenants of any anticipated, potential, or actual breach of any such lease.

4.3. **Accounts Manager.** The tenants shall employ or appoint an accounts manager to manage the financial aspects of the TIC. The accounts manager may be the same person or entity as the property manager.

4.3.1. Accounting. The accounts manager shall use best efforts to collect from the tenants any amounts due to the TIC, shall be responsible to pay all TIC debts to others from the operating account, shall disburse income over expenses to the tenants

CO-TENANCY AGREEMENT – CROSSROADS CORNER

monthly, and shall maintain proper and complete accountings for the TIC which shall be open to inspection by any representative of any tenant at any reasonable time.

4.3.2. Other Duties. The accounts manager shall perform other duties as described elsewhere in this agreement.

4.4. Term of Management Agreements. Any management agreement the tenants enter shall be renewable no less frequently than annually. Notwithstanding the foregoing, a particular agreement may provide for automatic renewal in the event that no tenant or manager gives written notice of intent not to renew such agreement within 30 days prior to the expiration of the agreement.

SECTION 5 – CAPITAL EXPENDITURES

5.1. Majority Approval. Any capital expenditure up to \$1,000.00 requires majority approval of the tenants unless the expenditure is required to prevent or repair significant damage to the property.

5.2. Unanimous Approval. Any capital expenditure over \$1,000.00 requires unanimous approval of the tenants unless the expenditure is required to prevent or repair significant damage to the property.

5.3. Pro Rata Shares. Each tenant is responsible for paying a *pro rata* share of the cost of any agreed upon capital expenditures.

SECTION 6 – PURCHASE COSTS AND SHARED MORTGAGE

6.1. Purchase Costs and Shared Mortgage. In order to purchase the property, the tenants intend to encumber the property with an assumed shared mortgage in favor of LaSalle Bank National Association, as Trustee for the Holders of Bear Stearns Commercial Mortgage Securities II, Inc., Commercial Mortgage Pass-Through Certificates, Series 2004-PWR6 (“lender”). Each tenant is responsible for paying a *pro rata* share of this shared mortgage, as well as of any costs attendant to closing the purchase of the property.

6.2. Ownership by Single Purpose Bankruptcy Remote Entities and Limited Waiver of Partition Right. As essential conditions of assuming the existing loan, the lender is requiring that the tenants be and remain “single purpose bankruptcy remote entities” and that they waive the right to partition during the life of the loan. Accordingly, solely to satisfy these lender-imposed conditions, and for no other business purpose, the purchasing tenants agree to these terms.

6.3. Contact Tenant. So long as this loan remains outstanding, the tenants unanimously agree that 45 Del Oro, LLC, may serve as lender’s sole contact with respect to the loan documents, and that any notices under the loan documents shall be deemed delivered to each tenant if delivered to 45 Del Oro, LLC. The tenants further agree that

45 Del Oro, LLC, shall be responsible for communicating with lender on behalf of the TIC.

SECTION 7 – RESTRICTIONS ON TRANSFER

7.1. General Restriction on Transfer. The tenants have agreed to co-own together because of their knowledge and confidence in each other. Accordingly, no tenant shall transfer its interest except after compliance with the terms of this section. Any attempted transfer of an interest that does not comply with this section shall be void and shall not be respected for any purpose.

7.2. Lender Approval Requirement. The tenants acknowledge that if an ownership interest is transferred to an individual or entity that is not a signatory on the shared mortgage, and this transfer is not approved by this lender, the lender could declare the entire outstanding balance on the loan due, and in the event of non-payment, initiate foreclosure of the property. Accordingly, no party shall transfer any interest in the property to a non-signatory unless (1) the shared mortgage lender approves the transfer in writing, or (2) the tenant's unanimously agree, in writing, to assume the risk that the lender may accelerate the loan.

7.3. Transfer to Original Tenant. Subject to the lender approval requirement, a tenant may transfer its share without other restriction to one or more original tenants.

7.4. Transfer to Others. Subject to the lender approval requirement, a tenant may transfer its share to any individual or entity other than an original tenant as provided in this Section.

7.4.1. Notice of Sale. If a tenant intends to sell its interest, it shall provide to the other tenants a Notice of Intended Partial Sale ("sale notice") stating the asking price, terms and conditions, and the amount, if any, of the sales commission to be paid to a real estate agent.

7.4.2. Right of First Refusal. The non-selling tenants shall have the right to purchase the selling tenant's interest on the terms and conditions stated in the sale notice reduced by the amount of any intended sales commission. This right may be exercised by providing the selling tenant with a Notice of Intent to Purchase ("purchase notice") within ten days of receipt of the sale notice. If more than one tenant provides a purchase notice, competitive bidding will be permitted, and the selling tenant shall select the purchaser. Failure to complete the purchase within ninety days of the purchase notice will constitute a default. If a non-selling tenant fails to provide a purchase notice, that tenant waives the right of first refusal.

7.4.3. Additional Right to Purchase. Before accepting any *bona fide* purchase offer, the selling tenant shall provide a copy of the offer to the other tenants. If the offer is one percent or more less than the asking price, each non-selling tenant shall

have the right to purchase the interest on the terms and conditions stated in the purchase offer. This right may be exercised by providing the selling tenant with a purchase notice within five days of receipt of the copy of the offer. If more than one tenant provides a purchase notice, competitive bidding will be permitted, and the selling tenant shall select the purchaser. Failure to complete the purchase on the terms contained in the offer will constitute a default. If a non-selling tenant fails to provide a purchase notice in response to the copy of the offer, that tenant waives the additional right to purchase. No further purchase rights shall be created as a result of good faith renegotiation of sales price or terms following disclosures or inspections.

7.5. Involuntary Transfer. If a tenant possesses information which would lead a reasonable person to believe that an involuntary transfer (defined below) of the tenant's interest will occur within ninety days, the tenant shall promptly send a Notice of Involuntary Transfer ("transfer notice") to the other tenants. The non-transferring tenants shall have the right to purchase the interest for the fair market value of the interest as determined by a qualified appraisal (defined below). This right may be exercised by providing the transferring tenant with a purchase notice within ten days of receipt of the transfer notice. If more than one tenant provides a purchase notice, competitive bidding will be permitted, and the transferring tenant shall select the purchaser. Failure to complete the purchase within ninety days of the purchase notice will constitute a default. If a non-transferring tenant fails to provide a purchase notice, that tenant waives the right to purchase, and the involuntary transfer may be completed.

SECTION 8 – INSURANCE

8.1. General Liability Insurance. The TIC shall maintain a policy insuring the TIC against public liability, including claims for wrongful eviction. Liability limits shall be not less than \$1,000,000.00 for injury, death, and property damage.

8.2. Hazard Insurance. The TIC shall maintain a master policy insuring the TIC against loss due to fire or other casualty and covering such other risks as are commonly covered with respect to properties similarly constructed, situated, and used. Coverage shall be in an amount equal to the property's full replacement value.

SECTION 9 – EVENTS TERMINATING CO-TENANCY

9.1. Catastrophic Damage. In the case of sudden, unexpected physical damage to the property resulting in a repair cost in excess of \$100,000.00, the following provisions shall control:

9.1.1. Determination of Funding and Repair Costs. As soon as practicable the TIC shall determine the amount available for repair from TIC funds and insurance proceeds, and obtain two or more written repair bids from licensed contractors.

9.1.2. Repair Determination. Provided that repairing the damage would not require a special assessment in excess of \$35,000.00 on any tenant, the TIC shall

repair the damage. If repairing the damage would require a special assessment in excess of \$35,000.00 on a tenant, repair shall only proceed upon unanimous agreement of the tenants. If the TIC does not repair the property, it shall sell the property in its then existing condition on the best possible terms, and sale and insurance proceeds shall be distributed *pro rata*.

9.1.3. Emergency Repairs. Emergency repairs shall not be limited or controlled by this provision.

9.2. **Condemnation**. Proceeds from any condemnation or eminent domain action shall be distributed *pro rata*.

9.3. **Partition**. Each tenant agrees to attempt a sale of its share in accordance with Section 7 of this agreement before seeking partition or sale in lieu of partition. Proceeds from a partition sale shall be distributed *pro rata*.

9.4. **Sale of Entire Property**. Sale of the entire property shall require unanimous agreement of the tenants. Proceeds from the sale of the entire property shall be distributed *pro rata*.

SECTION 10 – GOVERNANCE

10.1. **Voting**. Decisions affecting the TIC shall be decided by vote of the tenants.

10.1.1. Process. Formal meetings shall not be required for the tenants to vote on matters before them. Voting may occur via telephone, e-mail, facsimile, or mail. The results of any and all votes shall promptly be reduced to writing and acknowledged by the voting tenants.

10.1.2. Voting Power. Each tenant's voting power shall correspond with its *pro rata* share of the property. Unless otherwise provided in this agreement, decisions shall be made by majority vote of the tenants.

10.1.3. Deadlock. In the event of deadlock, the matter shall be resolved by mediation, or if mediation is not successful, through binding arbitration.

10.1.4. Suspension of Voting Rights. During any period when a tenant is in default, the tenant's voting rights shall be suspended.

10.2. **Mediation**. The tenants shall attempt in good faith to resolve any dispute related to the property through mediation with a qualified mediator. A qualified mediator must be both disinterested and have three years experience mediating real estate disputes. The tenant desiring mediation must provide the other tenants with ten days advance notice which shall include the name and address of a proposed mediator and a date and time for mediation. If a tenant is unable to attend the mediation on the noticed date, the

tenant may arrange with the other tenants an alternative date within five days of the originally noticed date. The costs of mediation shall be shared equally by the participating tenants. If mediation does not resolve the dispute, the initiating tenant may commence arbitration as provided in Section 10.3.

10.3. Arbitration. The tenants shall submit to binding arbitration any dispute related to the property which cannot be resolved through mediation. A qualified arbitrator must be both disinterested and have three years arbitrating real estate disputes. The tenant initiating arbitration must provide the other tenants with ten days advance notice which shall include the name and address of a proposed arbitrator and a date and time for arbitration. Any tenant may reject the proposed arbitrator by providing a rejection notice within two days of receipt of the original arbitration notice. In the event of such rejection, the tenant initiating arbitration shall initiate the arbitration before the Judicial Arbitration and Mediation Service (JAMS/Endispute, Inc.). If a tenant is unable to attend the arbitration on the noticed date, the tenant may arrange with the other tenants an alternative date within five days of the originally noticed date.

10.3.1. Procedure. Arbitration shall be pursued to conclusion as quickly as reasonably possible and within one month of the original arbitration notice unless all tenants agree to an extension of time. The parties shall have the right to discovery in accordance with California Code of Civil Procedure § 1283.05. Judgment on an arbitration award may be entered in any court having jurisdiction.

10.3.2. Compelling Arbitration. If the arbitration is not timely concluded, any tenant may petition a court of competent jurisdiction for an order compelling arbitration, and the court shall award all expenses, including attorney fees, incurred by the petitioning tenant unless it finds that the tenant acted without substantial justification.

10.3.3. Other Remedies. The provisions of this section shall not preclude a tenant from seeking injunctive or other provisional or equitable relief in order to preserve the status quo pending resolution of the dispute, and the filing of such an action shall not be construed as a waiver of arbitration rights.

10.3.4. Statutory Notice. YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

SECTION 11 – DEFAULTS AND REMEDIES

11.1. Defaults. Failing to fulfill any obligation stated in this agreement or taking any action which makes performance of the obligations described in this agreement impossible shall be deemed a default.

11.2. Correction by Other Tenants. In addition to any other remedy provided by law or in this agreement, any tenant shall have the right but not the obligation to negate a default and to assess related costs and expenses against the defaulting tenant. Such a tenant may advance funds personally, or with majority approval of the tenants, from TIC reserve funds. All advances shall constitute loans to the defaulting tenant at the maximum allowable annual interest rate, compounded annually, due immediately.

11.3. Notice of Default. Any tenant may provide a notice of default to any other tenant which shall include a description of the default, and a statement of actions required to correct the default. If the default is disputed, the disputing tenant shall initiate mediation of the matter within five days of receiving the notice.

11.4. Cure of Default. A defaulting tenant shall have seven days from receipt of a notice of default to correct the default. A party who fails to initiate mediation within five days of receiving such notice, or fails to correct the default within seven days of receiving such notice shall be in material breach of this agreement.

11.5. Remedies for Breach. Following breach of this agreement, the other tenants shall be entitled to any of the remedies set forth below.

11.5.1. Liquidated Damages. The breaching tenant shall pay \$5,000.00 to the TIC as liquidated damages in addition to all other payments due. The parties agree that this is a reasonable estimate of the extra loss and expense which would be incurred by the TIC and which would be otherwise difficult to ascertain.

11.5.2. Forced Sale. The TIC may cause a forced sale upon vote of a majority of the tenants. If approved, the accounts manager shall provide a Notice of Forced Sale to the breaching tenant including a description of the breach and a statement that the TIC intends to sell the breaching tenant's interest. Within five days of serving this notice the tenants shall begin the process of appraising the breaching tenant's share. Upon receipt of the appraisal, the breaching tenant's share shall be listed at the appraised value for a period not less than 30 days. If the breaching tenant's share has not been sold after thirty days, upon a majority vote of the tenants, the listing price may be reduced by up to ten percent. The TIC shall accept an offer which (1) is at or exceeds the listing price (2) provides for assumption of the breaching tenant's share of the shared mortgage, (3) provides for a cash down payment which equals or exceeds the breaching tenant's equity, (4) provides for close of escrow within 30 days, and (5) which contains no unusual contingencies or demands. In the event of multiple offers, the breaching tenant

may select the most advantageous offer. Such an offer, however, will be subject to the provisions, including right of first refusal, in Section 7 of this agreement.

11.5.3. Judicial Foreclosure. For the purpose of securing performance of the obligations described in this agreement, each tenant hereby pledges its interest to the others as security for such obligations and acknowledges that its interest is subject to foreclosure rights. In the event of breach, the non-breaching tenants may proceed with judicial foreclosure or execution once the obligation is reduced to a judgment through arbitration.

11.5.4. Distribution of Proceeds. Proceeds of sale shall be disbursed in the following order: (1) to cover transaction costs; (2) to satisfy the breaching tenant's share of outstanding TIC expenses whether or not caused by the breach; and (3) to the breaching tenant. If the amount received from the sale is insufficient to cover the breaching tenant's share of outstanding TIC expenses, the breaching tenant shall execute a promissory note for such deficiency which shall require interest at eight percent per annum, interest and principal amortized over three years, due and payable in thirty-six equal monthly installments.

SECTION 12 – DEFINITIONS AND MISCELLANEOUS

12.1. Definitions.

12.1.1. A "bona fide offer" is an offer to buy a tenant's interest in the property from a prospective buyer who is willing and able to complete such purchase.

12.1.2. "Days" shall mean all calendar days, whether or not weekend days or legal holidays.

12.1.3. "Encumber" shall mean any pledging, mortgaging, or otherwise securing any type of debt or obligation with the property, whether incurred voluntarily or involuntarily, and in any manner whatsoever.

12.1.4. "Including" shall have the same meaning as "included, but not limited to," unless otherwise expressly stated.

12.1.5. A "*pro rata* share" of any expense, expenditure, income, or proceeds shall be the same share as each co-tenant owns in the property, as determined from the recorded deed to the property.

12.1.6. "Emergency" shall mean a condition within the property that immediately endangers the integrity of the property or the health or safety of the occupants, guests, or public, or is the subject of a condemnation or enforcement action by a government agency.

12.1.7. A “transfer” is any sale, pledge, encumbrance, gift, bequest, or other transfer of any interest in the property, whether or not for value and whether or not made to another tenant. “Involuntary transfer” is any transfer made on account of a court order or otherwise by operation of law, including any transfer incident to any divorce or marital property settlement or any transfer pursuant to applicable community property or quasi-community property or similar state law. “Voluntary transfer” is any transfer made during a tenant’s lifetime which is not an involuntary transfer. Unless the context indicates otherwise, “transfer” indicates both voluntary and involuntary transfers.

12.2. Appraisal. When an appraisal is required to be initiated pursuant to the terms of this agreement, any selected appraiser shall be disinterested, have at least three years experience appraising similar real estate in the same area as the property, and hold a real estate broker or appraiser license. Each interested party shall have three days from the date an appraisal is initiated to select up to two appraisers, but all selected appraisers must agree to complete their appraisals within twenty-one days. Twenty-five days following the appraisal’s initiation, the accounts manager shall determine the appraised value as follows: If only one appraisal is received, the appraised value shall be the value stated in that appraisal. If two or three appraisals are received, the appraised value shall be the average of the appraisals. If four or more appraisals are received, the lowest and highest shall be disregarded and the appraised value shall be the average of the remaining appraisals.

12.3. Notices. Unless otherwise expressly stated in this agreement, any notice to the TIC shall be given to the property manager and the accounts manager. Any notice to a tenant shall be given either personally, or by e-mail, or by first class mail to the last known address of the tenant. Notices shall be effective upon personal delivery or three business days following mailing.

12.4. Authority. Each signatory to this agreement represents and certifies that she has authority to bind the entity on behalf of which she is signing to perform in accordance with the terms of this agreement.

12.5. Construction. Every covenant, term, and provision of this agreement shall be construed according to its fair meaning and not strictly for or against any tenant. The laws of the State of California shall govern.

12.6. Effective Date. This agreement shall become effective on the date it is executed by all tenants.

12.7. Termination Date. This agreement shall bind the tenants for ninety years or until such time as the entire property is sold, the agreement is replaced by another agreement, or the agreement is superseded or lapses by operation of law.

12.8. Successors. This agreement is shall inure to the benefit of, and shall bind each tenant, and its successors, legal representatives, and assigns, and shall constitute a covenant running with the property. No transfer of an interest in the property to any

other person or entity may be validly completed unless the transferee agrees in writing to be bound by the terms and conditions of this agreement.

12.9. Enforceability. Every provision of this agreement is intended to be severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason whatsoever, such illegality, invalidity, or unenforceability shall not affect the remainder of the agreement.

12.10. Waiver. Failure to insist on compliance or enforcement of any provision of this agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or any other provision of the agreement.

12.11. Entire Agreement. This agreement contains the entire agreement between the tenants regarding the property. Each tenant certifies that no oral or written promises, agreements, or warranties of any character have been made among the tenants except as set forth herein.


12.12. Modification. This agreement can be altered, amended, or modified only in writing signed by a majority of the tenants.

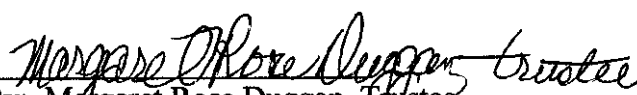
12.13. Representation. This agreement was drafted by joint counsel for the tenants, Rick Addicks, Attorney at Law, who has made clear to each tenant that it has the right to be represented by an independent attorney. Each tenant acknowledges that it has had ample time and has sufficient funds to consult with an independent attorney. Each tenant further certifies that it understands the terms of this agreement, and knowingly, voluntarily, and expressly waives the right to be represented by independent counsel.

IN WITNESS WHEREOF, the tenants, and each of them, have executed this agreement on February 13, 2007.


45 Del Oro, LLC

Cook Dodge, LLC


By: Molly Dowd, Trustee of
and Manager of the Sole Member


By: Margaret Rose Duggan, Trustee
as Manager of the Sole Member

Constance Dodge, LLC


By: Margaret Rose Duggan, Trustee
as Manager of the Sole Member

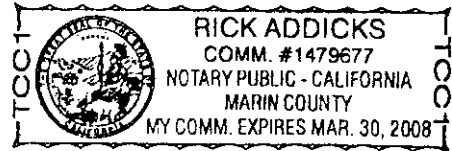
ACKNOWLEDGMENT

State of California
County of Marin

On FEBRUARY 13, 2007, before me, Rick Addicks, notary public in and for the State of California, personally appeared Molly Dowd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(SEAL)

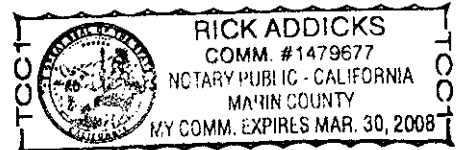
ACKNOWLEDGMENT

State of California
County of Marin

On FEBRUARY 13, 2007, before me, Rick Addicks, a notary public in and for the State of California, personally appeared Margaret Rose Duggan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(SEAL)

EXHIBIT "A"

Lot 1, in CEDARNOLE REPLAT 3, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, EXCEPT that part thereof described as follows:

Beginning at the intersection of the East right-of-way line of 72nd Street with the North right-of-way line of Farnam Street; thence North $01^{\circ}22'20''$ East (bearings referenced to the Final Plat of Cedarvale Replat 3), for 11.65 feet, along the said East right-of-way line of 72nd Street, to an angle point therein; thence South $78^{\circ}11'38''$ East, for 23.56 feet, to the said North right-of-way line of Farnam Street; thence South $73^{\circ}41'50''$ West, for 24.32 feet, to the Point of Beginning.