

21107

Prepared by and after recording mail to:
TierOne Bank
E Attn: Credit Administration Department
P.O. Box 83009
Lincoln, NE 68501-3009

Doc. No. _____
WOODBURY COUNTY, IOWA
Filed for Record

APR 27 2004

9:30 AM
PATRICK DILL, Auditor & Recorder
By: E. Long

MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Mortgage") made this 14th day of April, 2004, by and between **Castle on the Hill Limited Liability Company, an Iowa limited liability company** whose mailing address is c/o NuStyle Investment Corporation, 1025 Leavenworth Street, Omaha, Nebraska 68102, as "Mortgagor," and TierOne Bank, organized under the laws of the United States of America, whose mailing address is Attn: Credit Administration Department, P.O. Box 83009, Lincoln, NE 68501-3009, as "Mortgagee."

THIS MORTGAGE ENCUMBERS BOTH REAL AND PERSONAL PROPERTY, CONTAINS AN AFTER ACQUIRED PROPERTY CLAUSE AND SECURES PRESENT AND FUTURE LOANS AND ADVANCES.

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$150,000.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

WITNESSETH:

That Mortgagor does hereby mortgage, grant, transfer, sell, convey and assign to Mortgagee, the following described real property (hereinafter the "Real Estate"):

See Exhibit "A" attached hereto and incorporated herein by this reference,

together with all interest which Mortgagor now has, or may hereafter acquire in and to said Real Estate and in and to each of the following, together with all homestead and exemption rights thereto:

(a) all easements and rights of way appurtenant thereto, all hereditaments, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor in the Real Estate, either at law or in equity, now or hereafter acquired;

(b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");

(c) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore;

(d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Mortgagor or in which Mortgagor now has or hereafter acquires an interest;

(e) all of the rents, royalties, issues and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Rents and Profits"), and all right, title and interest of Mortgagor in and to all leases, licenses and occupancy agreements of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder;

(f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements;

(g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Mortgagor.

The property so mortgaged, granted, transferred, sold, conveyed and assigned is hereinafter referred to as the "Mortgaged Property".

FOR THE PURPOSE OF SECURING:

A. Payment of the principal sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00), evidenced by a \$150,000.00 Promissory Note of even date herewith from the Mortgagor payable to the order of Mortgagee with a due date of the fifteen (15) year anniversary from the date hereof (the "Promissory Note"), together with interest thereon, late charges and prepayment premiums, and all renewals, extensions, modifications or refinancing thereof and any promissory notes issued in substitution therefor.

B. All future advances and amounts advanced and expenses incurred by Mortgagee pursuant to this Mortgage.

THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.

C. Performance of and compliance with every obligation, covenant, and agreement of Mortgagor in the Affordable Housing Program Loan Agreement of even date herewith entered into between the Mortgagor and Mortgagee and any other loan documents evidencing or securing the indebtedness evidenced by the Promissory Note (collectively "Security Documents").

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS:

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property in fee simple and will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; that it will, at its expense, maintain and preserve the lien of this Mortgage as a first and paramount lien upon the Mortgaged Property.

2. **Performance of Obligations:** Mortgagor will pay when due the principal of, and interest on, the indebtedness evidenced by the Promissory Note and all charges, fees and other sums as provided in the Promissory Note and the other Security Documents and shall observe, perform and discharge all obligations, covenants and agreements that are secured by this Mortgage in accordance with their terms. Further, Mortgagor will promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required by Mortgagor in connection with any other document or instrument affecting the title to the Mortgaged Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

3. **Operation of Mortgaged Property:** To keep the Mortgaged Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be

constructed, damaged or destroyed thereon and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property; not to remove, demolish or materially alter any building, or the present character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral, of any kind unless the written consent of Mortgagee is first had and obtained; not to commit or permit any waste thereof or any act upon the Mortgaged Property; to do all other acts in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

4. Insurance:

(a) **Fire and Extended Coverage Insurance:** Mortgagor shall keep the Mortgaged Property insured against loss or damage by fire, hazard included within the term "extended coverage", and such other hazards as Mortgagee may require, in an amount equal to the full replacement value of the improvements (80% co-insurance clause permitted) as established by a competent appraiser. Rental Value insurance equal to the rental value for a twelve (12) month period, as established by a competent appraiser, shall be carried throughout the term of the loan. The Mortgage Property, if located in a 100-year flood plain, shall also be covered, for the term of the loan, by flood insurance in an amount at least equal to the outstanding principal balance of the loan, or the maximum limit of coverage with respect to this particular type of property, whichever is less.

All such policies shall contain endorsements that no act or negligence of the insured, or any occupant, and no occupancy or use of the Real Estate or the Improvements located thereon for purposes more hazardous than permitted by the terms of the policy, will affect the validity or enforceability of such insurance as against the Mortgagee; and all such policies shall be written in amounts sufficient to prevent Mortgagor from becoming a coinsurer. In the event of loss, Mortgagor shall give immediate written notice to Mortgagee, and Mortgagee may, but is not obligated to, make proof of loss if not made promptly by Mortgagor. In case of any loss the amount collected under any policy of insurance on the Mortgaged Property may, at the option of the Mortgagee, be applied by Mortgagee upon any indebtedness and/or obligation secured hereby and in such order and amount as Mortgagee may determine; or said amount or any portion thereof may, at the option of the Mortgagee, either be used in replacing or restoring the Mortgaged Property partially or totally destroyed to a condition satisfactory to said Mortgagee, or said amount, or any portion thereof, may be released to the Mortgagor. In any such event the Mortgagee shall not be obligated to see to the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby or an additional advance hereunder. Such application, use, and/or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any foreclosure sale held hereunder. If said property is sold pursuant to any decree of foreclosure, all right, title and interest of Mortgagor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Mortgagee.

(b) **Liability Insurance:** To maintain with respect to the Mortgaged Property policies of liability insurance, which shall be chosen by Mortgagor subject to approval by Mortgagee, insuring Mortgagor and Mortgagee, as follows:

(i) Comprehensive general public liability insurance with a combined single limit of not less than \$2,000,000.00;

(ii) During the making of any alterations or improvements to the Real Estate or the Improvements located thereon, (a) owner's contingent liability insurance covering claims not covered by the general comprehensive insurance referred to above, and (b) workmen's compensation insurance covering all persons engaged in making such alterations or improvements; and

(iii) If there are pressure fired vessels within the Mortgaged Property, broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance and providing for full repair and replacement cost coverage.

(c) **General:** The insurance carrier providing the insurance shall be chosen by Mortgagor subject to approval by Mortgagee; provided that such approval shall not be unreasonably withheld. It is required that the insurance carrier hold a Policyholders Rating of at least B+ as set forth in the most current issue of Best's Key Rating Guide for property and casualty companies.

The policies of insurance to be provided by Mortgagor hereunder shall provide that no cancellation or modification thereof shall be effective unless at least thirty (30) days' prior written notice of such proposed cancellation or modification shall have been given Mortgagee and shall be delivered to, and remain in possession of, Mortgagee as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Mortgagor to Mortgagee to all rights thereunder, including all return premiums; to deliver to Mortgagee a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Mortgagor fails to so deliver any renewal policies, Mortgagee may procure such insurance as it may elect and may make payment of premiums thereon, which payment is repayable on demand. Mortgagee shall not be responsible, however, for obtaining or maintaining such insurance. Mortgagee, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Mortgagee pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not default hereunder has occurred shall Mortgagee, by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Mortgagor hereby expressly assumes full responsibility therefor and liability, if any thereunder.

5. Taxes and Other Sums Due: To pay, satisfy and discharge:

(a) at least ten (10) days before delinquency, all general and special taxes and assessments affecting the Mortgaged Property; and

(b) in no event later than the date such amounts become due, all encumbrances, charges and liens, with interest, on the Mortgaged Property, or any part thereof, which are, or appear to Mortgagee to be, prior to or superior hereto;

(c) if the Mortgaged Property includes a leasehold estate, all payments and obligations required of the Mortgagor, or his successor in interest, under the terms of the instrument or instruments creating such leasehold, Mortgagor hereby agreeing not to amend, change or modify his leasehold interest or the terms on which he has such leasehold interest, or to agree to do so, without the written consent of Mortgagee first obtained; and

(d) all payments and monetary obligations required of the owner of the Mortgaged Property under any declaration of covenants, conditions and restrictions pertaining to the Mortgaged Property, or any modification thereof.

Should Mortgagor fail to make any such payment, Mortgagee, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying his reasonable fees. Mortgagor agrees to notify Mortgagee immediately upon receipt by Mortgagor of notice of any increase in the assessed value of the Mortgaged Property and agrees that Mortgagee, in the name of Mortgagor, may contest by appropriate proceedings such increase in assessment.

In the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, the holder of this Mortgage and of the obligations which it secures shall have the right to

declare all sums secured hereby due as of a date to be specified by not less than 30 days' written notice to be given to Mortgagor by Mortgagee; provided, however, that such election shall be ineffective if Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such tax and agrees to pay any such tax when hereafter levied or assessed against the Mortgaged Property.

If requested by Mortgagee, Mortgagor covenants and agrees to deposit with Mortgagee on the first day of each month, in addition to the installment payments provided for under the Promissory Note, 1/12 of the anticipated annual taxes, assessments and public charges, general and special, levied and assessed against the Mortgaged Property and the premiums for insurance required to be maintained by Mortgagor hereunder (collectively the "Deposits"), as estimated by Mortgagee. The amount of the Deposits shall be adjusted by Mortgagee periodically so that sums sufficient will be available to pay all of the foregoing before interest accrues and, upon demand in writing by Mortgagee, Mortgagor will promptly deposit with Mortgagee any amount in excess of said monthly payments which shall be required to pay such taxes, assessments, public charges and insurance premiums prior to delinquency. Mortgagor shall promptly forward to Mortgagee all bills for all taxes, assessments, public charges and insurance premiums in respect of the Mortgaged Property. The Deposits shall not bear interest and shall be applied by Mortgagee to the payment of the taxes, assessments, public charges and insurance premiums prior to delinquency. In case of default in any of the terms of this Mortgage or any other securing agreement now or hereafter given in connection with the loan secured hereby, the Deposits shall constitute additional security for all sums secured by this Mortgage and may be applied by Mortgagee as a credit upon the indebtedness secured hereby. Mortgagee may, from time to time, at its option, waive, and after such waiver, reinstate any and all provisions of this subparagraph requiring the Deposits, by notice in writing to Mortgagor. While such waiver is in effect, Mortgagor shall pay all taxes, assessments, public charges and insurance premiums as otherwise herein provided.

6. Sums Advanced to Bear Interest: To pay immediately upon demand any sums advanced or paid by Mortgagee under any clause or provision of this Mortgage. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the default rate set forth in the Promissory Note and shall be secured by this Mortgage.

7. Assignment of Deposits: That as further additional security Mortgagor hereby transfers and assigns to Mortgagee, all right, title and interest to any and all monies deposited by Mortgagor, or deposited on behalf of Mortgagor, with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation or use of any utility by Mortgagor, pertaining to the Mortgaged Property.

8. Failure of Mortgagor to Comply with Mortgage: Should Mortgagor fail to make any payment, or to do any act as provided in this Mortgage, or fail to perform any obligation secured by this Mortgage, or do any act Mortgagor agreed not to do, Mortgagor shall, at the election of Mortgagee, be in default under this Mortgage. Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof and without contesting the validity or amount of the same, may:

(a) make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Mortgaged Property for such purposes;

(b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgment is or appears to be prior or superior hereto; and

(c) in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees. Mortgagor agrees to repay any amount so expended on demand of Mortgagee with interest at the default rate set forth in the Promissory Note.

IT IS MUTUALLY AGREED THAT:

9. Litigation: Mortgagor shall defend the title to the Mortgaged Property in any action or proceeding purporting to affect the Mortgaged Property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Mortgagee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to, or destruction of, the Mortgaged Property, and Mortgagee is hereby authorized, without obligation so to do, to commence, appear in or defend any such

action, whether brought by or against Mortgagor or Mortgagee, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding; and Mortgagor or Mortgagee may appear or intervene in any action or proceeding; and retain counsel therein; and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Mortgagor so appears or defends, Mortgagor on demand shall pay all costs and expenses of Mortgagee, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Mortgagee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Mortgagee in the Mortgaged Property is directly questioned by such action, including but not limited to any action for the condemnation or partition of the Mortgaged Property.

10. **Condemnation:** All sums due, paid or payable to Mortgagor, or any successor in interest of Mortgagor, whether by way of judgment, settlement or otherwise:

(a) for injury or damage to the Mortgaged Property; or

(b) in connection with any condemnation for public use or injury to the Mortgaged Property or any part thereof; or

(c) arising out of all causes of action, whether accruing before or after the date of this Mortgage, sounding in tort or contract, including causes of action for fraud or concealment of a material fact,

together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Mortgagee. Mortgagee shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Mortgagor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Mortgagee may require. Amounts received by Mortgagee on account of any of the foregoing may be applied, at the option of Mortgagee, upon any indebtedness secured hereby without prepayment premium or may be used in replacing or restoring the Mortgaged Property involved; or may be released to Mortgagor. No such application, use or release shall cure or waive any default, or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Release, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Mortgagee, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Mortgage upon the remainder of the Mortgaged Property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Mortgagee with respect to the remainder of the Mortgaged Property, Mortgagee may:

(a) release from this Mortgage any part of the Mortgaged Property;

(b) consent to the making of any map or plat thereof;

(c) join in granting any easement thereon; or

(d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

12. **Right to Collect and Receive Rents and Profits:** Notwithstanding any other provisions hereof, Mortgagee hereby grants permission to Mortgagor to collect and retain the rents, income, issues and profits of the Mortgaged Property as they become due and payable, but reserves the right to revoke such permission at any time, with or without cause, by notice in writing to Mortgagor, mailed to Mortgagor at his last known address. In any event, such permission to Mortgagor automatically shall be revoked upon default by Mortgagor in payment of indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Mortgagee may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and

unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Mortgagee may determine; and except for such application, Mortgagee shall not be liable to any person for the collection or noncollection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Mortgagee be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. **Foreclosure:** Upon default by Mortgagor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, or any agreement secured hereby, and the failure to cure the same within any applicable grace period, Mortgagee may, at its option, declare all sums secured hereby immediately due and payable and, at the option of the Mortgagee:

(a) this Mortgage may be foreclosed judicially in the manner provided by law for the foreclosure of mortgages on real property; or

(b) this Mortgage may be foreclosed through nonjudicial foreclosure as provided in Chapter 655A, Iowa Code, entitled "Nonjudicial Foreclosure of Nonagricultural Mortgages", as presently enacted or hereinafter amended.

Upon any default under this Mortgage, or any note secured hereby, and following any acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time, shall constitute an evasion of the payment terms of the indebtedness secured hereby and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include a premium required under the prepayment privilege, if any, contained in any note secured hereby.

14. **Personal Property:** This Mortgage is also intended to encumber and create, and Mortgagor does hereby grant to Mortgagee, a security interest in any and all of the Mortgaged Property which is personal property owned by Mortgagor and now or hereafter located on, or used in connection with, the real estate, including, but not limited to, all equipment, fixtures, furniture, appliances and articles of personal property which are necessary or useful to the complete and comfortable use and occupancy of the Improvements for all purposes for which they are intended and such other goods and chattels and personal property owned by Mortgagor as are ever to be used or furnished in operating the Improvements, or the activities conducted therein, and all renewals or replacements thereof or substitutions therefore, whether or not the same shall be attached to the Improvements in any manner, and all building materials and equipment hereafter situate on or about the Real Estate or the Improvements. The foregoing security interest shall also cover Mortgagor's leasehold interest in any of the foregoing items which are leased by Mortgagor. Mortgagor shall, from time to time, upon request of Mortgagee, provide Mortgagee with a current inventory of all of the personal property in which the Mortgagee is granted a security interest hereunder, in such detail as Mortgagee may require.

15. **Security Agreement:** This Mortgage constitutes a security agreement between Mortgagor and Mortgagee with respect to all personal property in which Mortgagee is granted a security interest hereunder, and, cumulative of all other rights and remedies of Mortgagee hereunder, Mortgagee shall have all of the rights and remedies of a secured party under the Iowa Uniform Commercial Code. Mortgagor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any default hereunder not cured within any applicable grace period, Mortgagee shall have the right to cause any of the Mortgaged Property which is personal property and subject to security interest of Mortgagee hereunder to be sold in one or more of public or private sales as permitted by applicable law, including at a sale held in conjunction with the foreclosure sale of the Real Estate and Improvements, and Mortgagee shall further have all additional and other rights and remedies, whether at law in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Mortgagee. Expenses of retaking, holding, preparing for sale, selling or the like shall be born by Mortgagor and shall include Mortgagee's fees and legal expenses. Mortgagee shall have the right to enter upon the Real Estate and the Improvements or any other real property or any personal property which is the subject of the security interest granted herein as located to take possession of, assemble and collect such personal property or to

render it unusable, or Mortgagor, upon demand of Mortgagee, shall assemble such personal property and make it available to Mortgagee at a place deemed reasonably convenient to Mortgagee. If notice is required by law, Mortgagee shall give Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of the Mortgaged Property or of the time of or after which any private sale or other intended disposition is to be made, and, if such notice is sent to Mortgagor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Mortgagor. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Mortgage upon giving the same notice with respect to the sale of the personal property hereunder as is required with respect to the sale under the power of sale given the Mortgagee under this Mortgage.

16. Fixture Financing Statement: This Mortgage is intended to be a financing statement within the purview of the Iowa Uniform Commercial Code with respect to those items of the Mortgaged Property as constitute fixtures on the Real Estate. The address of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth on the first page of this Mortgage. This Mortgage is to be filed for record with the County Recorder in each of the counties where the Real Estate is located.

17. No Waiver by Mortgagee: No waiver by Mortgagee of any right under this Mortgage shall be effective unless in writing. Waiver by Mortgagee of any right granted to Mortgagee under this Mortgage or of any provision of this Mortgage as to any transaction or occurrences shall not be deemed a waiver as to any future transaction or occurrences. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Mortgagor that Mortgagor was obligated hereunder, but failed to make or perform, or by adding any payment so made by Mortgagee to the indebtedness secured hereby, Mortgagee does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

18. Waiver of Statute of Limitations: Time is of the essence in all Mortgagor's obligations hereunder; and to the extent permitted by law, Mortgagee waives all present or future statutes of limitations with respect to any debt, demand or obligation secured hereby in any action or proceeding for the purpose of enforcing this Trust or any right or remedies hereunder.

19. Inspection and Business Records: Mortgagee's representatives may, at any time prior to the payment in full of the indebtedness secured hereby and the release of this Mortgage, enter upon and inspect the Mortgaged Property at any reasonable time or times. Mortgagor shall furnish to Mortgagee, Mortgagor certified annual operating statements for the Mortgaged Property by April 1 of each year during the term of the Promissory Note and all renewals, extensions, modifications or refinancings thereof or substitutions therefore, which statements shall be prepared in accordance with generally accepted accounting principles consistently applied. Said statements shall include a rent roll, gross income (itemized as to source), operating expenses (itemized) and net income before federal income taxes.

Mortgagor shall furnish to Mortgagee, Mortgagor's certified annual financial statements for the Mortgage by April 1st of each year during the term of the Promissory Note and all renewals, extensions, modifications or refinancings thereof or substitutions therefore. Said statements shall include a balance sheet, profit and loss statement, and any supplemental schedules. If Mortgagor fails to furnish said statements, Mortgagee shall, at its option, have the right to audit Mortgagor's books and records. Upon request, Mortgagor will also provide copies of its federal income tax returns to Mortgagee.

20. Acceleration Clause: Should Mortgagor or any successor in interest of Mortgagor permit, cause or suffer to occur a default or event of default specified in the Promissory Note or otherwise be in default under this Mortgage or any of the Security Documents, then Mortgagee shall have the right, at its option, subject to the giving of any applicable notice of right to cure or default under the Promissory Note, Mortgage or Security Documents, to declare all sums secured hereby immediately due and payable.

21. Remedies. No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Mortgagee may be exercised from time to time by Mortgagee and as often as may be deemed expedient by Mortgagee; and Mortgagee may pursue inconsistent remedies. If Mortgagee holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Mortgagor, Mortgagee may, at its option, offset against any indebtedness secured hereby, and the Mortgagee is hereby authorized and empowered at

its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness of the Mortgagor to the Mortgagee any and all sums of money of Mortgagor which Mortgagee may have in its possession or under its control, including without limiting the generality of the foregoing, any savings account, deposit, investment certificate, escrow or trust funds.

22. **Law Applicable:** This Mortgage shall be construed according to the laws of the State of Iowa.

23. **Illegality:** In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable.

24. **General provisions:**

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

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

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

(d) Captions and paragraph headings used herein are for convenience only, are not a part of this agreement, and shall not be used in construing it.

If more than one person is named herein as Mortgagor, each obligation of Mortgagor shall be the joint and several obligation of each such person. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

25. **Redemption:** It is agreed that if this Mortgage covers less than ten acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against Mortgagor which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in §§628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop:

(a) The Real Estate is less than ten acres in size;

(b) The court finds affirmatively that the said Real Estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and

(c) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagor or its successor in interest in such action.

If the redemption period is so reduced, Mortgagor or its successor in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in §§628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagor shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

26. **Partial Foreclosure:** This Mortgage may be foreclosed as many times as may be desired or required, judicially or non-judicially, as to all or any part of the Real Estate herein described without causing or effecting a merger into such foreclosure of the Promissory Note, Mortgage or any other Security

Document, and without extinguishing or in any way affecting the legal existence or enforceability of the Promissory Note, Mortgage or any other Security Document.

27. **Attorney's Fees:** Mortgagor shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorney's fees and legal expenses.

28. **Further Assurances:** At any time and from time to time until payment in full of all indebtedness secured hereby, Mortgagor will, at the request of Mortgagee, promptly execute and deliver to Mortgagee such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Mortgagee with respect to the Mortgaged Property, including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Mortgagee in connection with the recordation of any such instruments shall become additional indebtedness of Mortgagor secured by this Mortgage. Such amounts shall be immediately due and payable by Mortgagor to Mortgagee.

29. **American with Disabilities Act.** At its sole expense, Mortgagor shall cause the Mortgaged Property to be and remain in compliance with the Americans with Disabilities Act and all similar state and local laws, rules and regulations (hereafter "ADA") during the term hereof. If the Mortgaged Property is remodeled or altered while this Mortgage is in effect, the Mortgagor shall have the work performed so that the Mortgaged Property continues to comply with the ADA. Mortgagor shall furnish to Mortgagee, if requested, a written opinion from a licensed architect that the remodeling/alterations comply with the ADA. Mortgagor hereby warrants and represents to Mortgagee that there are no pending or threatened claims by the Department of Justice or third parties relating to the ADA. Mortgagor hereby agrees to indemnify and hold harmless the Mortgagee, its directors, officers, employees and agents, and any successor to Mortgagee's interest, from and against any and all claims, damages, losses and liabilities arising in connection with the violation of the ADA. **THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND MORTGAGOR'S OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL SURVIVE THE REPAYMENT OF THE PROMISSORY NOTE AND THE RELEASE OF THIS MORTGAGE.**

30. **Residential Lead-Based Paint Hazard Reduction Act.** At its sole expense, Mortgagor shall cause the Mortgaged Property to be and remain in compliance with all applicable provisions of the Residential Lead-Based Paint Hazard Reduction Act and all similar federal, state or local statutes, laws or ordinances, and any rules and regulations promulgated thereunder (jointly "Lead-Based Paint Hazard Laws"). Mortgagor represents and warrants (a) that no notice has been received by Mortgagor with respect to, nor is Mortgagor aware of any basis for, any federal, state or local agency investigation, administrative order, consent order or decree, litigation or settlement regarding any violation of Lead-Based Paint Hazard Laws (b) the Mortgaged Property is and at all times has been in compliance with Lead-Based Paint Hazard Laws, and (c) no notice, demand, claim or other communication has been received by Mortgagor from any governmental authority or other entity or individual claiming any violation of or demanding compliance with any Lead-Based Paint Hazard Laws, or demanding payment, contribution, remedial action or any other action or inaction with respect to any actual or alleged violation thereof. Mortgagor hereby agrees to indemnify and hold harmless the Mortgagee, its past, present and future directors, officers, employees and agents, and any successor to Mortgagee's interest, from and against any and all claims, damages, losses and liabilities arising in connection with any violation of Lead-Based Paint Hazard Laws. **THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND MORTGAGOR'S OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL SURVIVE THE REPAYMENT OF THE PROMISSORY NOTES, AND THE RELEASE OF THIS MORTGAGE.**

31. **Acknowledgment of Receipt of Copies of Debt Instrument:** Mortgagor hereby acknowledges the receipt of a copy of this Mortgage.

32. **Release of Rights of Dower, Homestead and Distributive Share:** Each Mortgagor hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

33. **Notices.** All notices, demands, requests or other communications (notices) required under this Mortgage shall be in writing and shall be deemed given when personally delivered or mailed by first class U.S. mail, postage prepaid, addressed as follows:

ROLL 641 IMAGE 697

To the Mortgagee: TierOne Bank
Attn: Credit Administration Department
P.O. Box 83009
Lincoln, NE 68501-3009

To the Mortgagor: Caste on the Hill Limited Liability Company
Attn: NuStyle Investment Corporation
1025 Leavenworth Street
Omaha, Nebraska 68102

Either party may, in substitution of the foregoing, designate a different address or addresses within the continental United States for the purposes of this section by written notice delivered to the other party in the manner prescribed above at least ten (10) days in advance of the date on which such change of address is to be effective.

In the event any applicable statute shall provide a mandatory method for the delivery of notice then the statutory method shall be followed.

34. AHP Restrictions and Affordable Housing Program Rider ("HUD Rider").
Mortgagor agrees that seventy seven and thirty three hundredths percent (77.33%) of the rental units at the Mortgaged Property must remain occupied by and affordable for households with incomes at or below fifty percent (50.00%) of the area median income; that twenty two and sixty seven hundredths percent (22.67%) of the units at the Mortgaged Property must remain occupied by and affordable for households with incomes above eighty percent (80.00%) of the area median income; and that such requirements shall be applicable for a period of at least fifteen (15) years; that Mortgagee shall be given notice of any sale or refinancing of the Mortgaged Property occurring prior to the end of such fifteen (15) year period; in the case of a sale or refinancing of the Mortgage Property occurring prior to the end of such period, the Promissory Note be paid in full unless the Mortgaged Property continues to be subject to the restrictions stated in this paragraph, and that the income-eligibility and affordability restrictions applicable to the Mortgaged Property may terminate upon foreclosure or upon transfer in lieu of foreclosure.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on the date first above written.

MORTGAGOR:

Castle on the Hill Limited Liability Company,
an Iowa limited liability company

By: Castle on the Hill Managing Member Limited
Liability Company, an Iowa limited liability
company, Managing Member

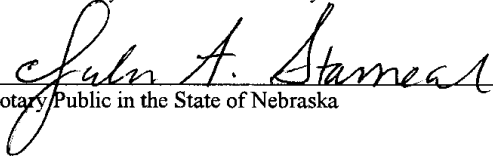
By: Tammy I. Barrett
Tammy I. Barrett, Manager

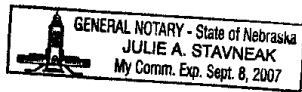
By: Todd R. Heistand
Todd R. Heistand, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2 day of April, 2004, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Tammy I. Barrett, Manager of Castle on the Hill Managing Member Limited Liability Company, an Iowa limited liability company, the Managing Member of Castle on the Hill Limited Liability Company, an Iowa limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be her voluntary act and deed on behalf of the company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

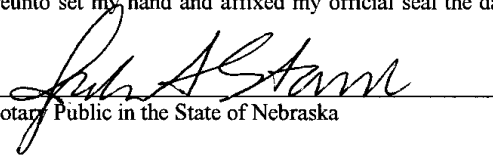

Notary Public in the State of Nebraska



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 12 day of April, 2004, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Todd R. Heistand, Manager of Castle on the Hill Managing Member Limited Liability Company, an Iowa limited liability company, the Managing Member of Castle on the Hill Limited Liability Company, an Iowa limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of the company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.


Notary Public in the State of Nebraska

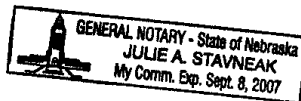


EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL A: All of Block Sixty-nine (69), and the vacated alleys therein, together with the North One (1) Foot of that part of the vacated Twelfth Street which abuts thereon, Sioux City East Addition, in the County of Woodbury and State of Iowa.

PARCEL B: Lot Four (4), and the North one-half (N 1/2) of Lot Five (5), Block Sixty-Eight (68) Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL C: The West Eighty-nine (89) feet of Lot Six (6) and the West Eighty-nine (89) feet of the South one-half (S 1/2) of Lot Five (5), Block Sixty-Eight (68) Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL D: East Sixty-one Feet of South one-half (E61' S 1/2) of Lot Five (5) in Block Sixty-eight (68) and East Sixty-one Feet (E 61') of Lot Six (6) of Block Sixty-eight (68) of Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL E: Vacated 12th Street abutting Block 69 Sioux City East Addition in the County of Woodbury, State of Iowa.