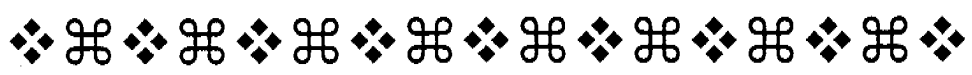


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Lloyd J. Dowding
REGISTER OF DEEDS

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LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
1210 GOLDEN GATE DRIVE, STE 1109
PAPILLION, NE 68046-2895
402-593-5773

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TENANTS IN COMMON AGREEMENT

THIS TENANTS IN COMMON AGREEMENT ("Agreement") is made and effective as of the 1 day of JULY, 2005 (the "Effective Date"), by and among Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95; Wakeley Enterprises, L.L.C., a Nebraska limited liability company; Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees, or their successors in trust, under the Jerome L. Heinrichs Living Trust dated April 28, 2004, and any amendments thereto; Thomas W. Schleisman, Trustee of the Gregory Schleisman Family Trust; and Edward A. Bedel (individually a "Tenant in Common" and collectively the "Tenants in Common"), with reference to the facts set forth below.

RECITALS

A. The Tenants in Common will acquire the percentage undivided interests set forth on Exhibit A in certain real property and improvements, as more particularly described in Exhibit B attached hereto and incorporated herein (the "Project").

B. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of their rights and responsibilities as to each other and as to others and to delegate authority and responsibility for the intended further operation and management of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. **Nature of Relationship Between Co-Tenants.** The Tenants in Common shall each hold their respective interests in the Project as tenants in common. The Tenants in Common do not intend by this Agreement to create a partnership or a joint venture, but merely to set forth the terms and conditions upon which each of them shall hold their respective interests in the Project. Neither do the Tenants in Common wish to create a partnership or joint venture with the Property Manager (as defined below). Each Tenant in Common hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to the joint ownership of the Project. The exclusion elected by the Tenants in Common hereunder shall commence with the execution of this Agreement and shall be equally applicable to all assignees of a Tenant in Common upon such assignment. Each Tenant in Common hereby covenants and agrees that each Tenant in Common shall report on such Tenant in Common's respective federal and state income tax returns such Tenant in Common's respective share of items of income, gain/loss, deduction and credits that result from holding the Project in a manner consistent with (i) the treatment of the co-tenancy as a co-ownership of real property (and not a partnership) for federal and state income tax purposes and (ii) the exclusion of the Tenants in Common from Subchapter K of Chapter 1 of the Code, commencing with the first taxable year of such Tenant in Common that includes the Effective Date or, for assignees of a Tenant in Common, the date of such assignment. No Tenant in

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Common shall notify the Commissioner of Internal Revenue that such Tenant in Common desires that Subchapter K of the Code apply to the Tenants in Common and each Tenant in Common hereby agrees to indemnify, protect, defend and hold the other Tenants in Common harmless from and against all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys' fees, which may result from any Tenant in Common so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return. The Tenants in Common shall not file a partnership or corporate tax return, conduct business under a common name, execute an agreement identifying any or all of the Tenants in Common as partners, shareholders, or members of a business entity, or otherwise hold themselves out as a partnership or other form of business entity. Except as expressly provided herein, no Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind any other Tenant in Common or to incur any obligations with respect to the Project.

2. Management.

2.1 Concurrently with the acquisition of the Project, the Tenants in Common will enter into a Property and Asset Management Agreement (the "Management Agreement") with Investors Realty, Inc. ("Property Manager") and Jerome L. Heinrichs ("Asset Manager"). Pursuant to the Management Agreement, the Property Manager shall be the sole and exclusive manager of the Project, interface with the owner and holder of any first lien mortgage encumbering the Project during the term of the Management Agreement and act as the agent of the Tenants in Common with respect to the management, operation, maintenance and leasing of the Project during the term of the Management Agreement. Neither (a) the death, retirement, removal, withdrawal, termination or resignation of the Property Manager, (b) any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Property Manager, nor (c) the termination of the Management Agreement shall cause the termination of this Agreement and this Agreement shall remain in full force and effect notwithstanding any such events.

2.2 **Unanimous Consent of the Tenants in Common.** The consent of all of the Tenants in Common shall be required with respect to any sale, exchange, lease or release of all or a portion of the Project, any loans or modifications of any loans secured by the Project, the approval of any property management agreement or any extension, renewal or modification thereof. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, with respect to any (i) sale or exchange of all or a portion of the Project or (ii) loan or modification of any loan secured by the Project, the Tenants in Common shall have five (5) days after the date the request for such consent or approval is received pursuant to Section 10.8 to approve or disapprove of the matter. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, with respect to any modification or renewal of the any property management agreement, the Tenants in Common shall have fifteen (15) days after the date the request for consent or approval is received pursuant to Section 10.8 to the Tenants in Common for their approval or disapproval of the matter. Whenever in this Agreement the consent or approval of the Tenants in

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Common is required or otherwise requested, with respect to any lease or release of all or a portion of the Project, the Tenants in Common shall have five (5) days after the date the request for consent or approval is received pursuant to Section 10.8 to the Tenants in Common for their approval or disapproval of the matter. The Tenants in Common agree to use their best efforts to respond to any request for consent or approval. If a Tenant in Common does not disapprove of such matter within the specified response period described above, the Tenant in Common shall be deemed to have approved the matter. By execution hereof, the Tenants in Common confirm their approval of the Property Management Agreement.

2.3 Majority Consent of the Tenants in Common. Whenever the approval or consent of the Tenants in Common is required with respect to any items, other than those set forth in Section 2.2, the approval or consent of the Tenants in Common holding more than 55% of the percentage interest in the Project shall be required to approve such action. If a Tenant in Common does not disapprove of such matter within fifteen (15) days after the date the request for consent or approval is received pursuant to Section 10.8, the Tenant in Common shall be deemed to have approved the matter.

3. Income and Liabilities. Except as otherwise provided herein and in the Management Agreement, all benefits, and obligations of the ownership of the Project, including, without limitation, income, revenue, operating expenses, proceeds from sale or refinance or condemnation awards shall be shared by the Tenants in Common in proportion to their respective undivided interests in the Project. Notwithstanding the foregoing, (a) each Tenant in Common shall be responsible for all real estate and personal property taxes, general and special real property assessments and other like charges (collectively "Taxes") attributable to its undivided interest in the Project, (b) fees under the Management Agreement shall be paid by each of the Tenants in Common as provided in the Management Agreement and (c) expenses or other costs that are not applied to the Tenants in Common pro rata based on their interests in the Project shall be separately charged to each Tenant in Common. The Tenants in Common shall receive, no less frequently than quarterly, all cash from operations of the Project after payment of expenses and debt service, in proportion to their respective undivided interests in the Project, except for such amounts as may be determined by the Property Manager pursuant to the Management Agreement to be retained for reserves or improvements.

4. Co-Tenant's Obligations. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including, without limitation:

4.1 Documents. The Tenants in Common shall execute any and all documents required in connection with a sale or refinancing of the Project in accordance with Section 5 and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Tenants in Common with respect to the Project or any loans encumbering the Project.

4.2 Additional Funds. Each Tenant in Common will be responsible for a pro rata share (based on its undivided interest or as otherwise provided with respect to the

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fees under the Management Agreement, or other items specifically applicable to individual Tenants in Common) of any future cash needed in connection with the ownership, operation, management and maintenance of the Project as determined by the Property Manager pursuant to the Management Agreement. Without limiting the foregoing, each Tenant in Common agrees that if any loan for the Project provides for (recourse liability to any Tenant in Common or any affiliate and non-recourse liability to one or more of the other Tenants in Common, if such Tenant in Common or any affiliate pays more than its pro rata share of the liability related to the loan (as compared to its ownership interest) as a result of such recourse liability ("Excess Payment"), the other Tenants in Common agree to reimburse such Tenant in Common or any affiliate for the Tenants in Common's pro rata share of such Excess Payment; provided, however, that the Property Manager has agreed to indemnify the Tenants in Common in Section 13.9.2 of the Management Agreement to the extent a Tenant in Common becomes liable to the lender as a result of certain actions of the Property Manager. In addition, each Tenant in Common shall be liable for, and indemnify and hold harmless, the other Tenants in Common as a result of any action or inaction by such Tenant in Common that causes any recourse liability or damages to the Tenants in Common or the Project with respect to any loan. To the extent any Tenant in Common fails to advance any funds pursuant to this Section within ten (10) days after the Property Manager or any Tenant in Common delivers notice that such additional funds are required, any other Tenant(s) in Common may pay such amount. The nonpaying Tenant in Common shall reimburse the paying Tenant(s) in Common within thirty (30) days the amount of any such payments plus interest thereon at the rate of ten percent (10%) per annum (but not more than the maximum rate allowed by law) until paid. In the event any Tenant in Common defaults under the preceding sentence, the Property Manager is hereby authorized to pay the Tenant(s) in Common entitled to reimbursement and interest the amounts due out of future cash from operations or from the sale or refinancing of the Project or other distributions pursuant to the Management Agreement from the defaulting Tenant's in Common share of proceeds. The remedies against a nonpaying Tenant in Common provided for herein are in addition to any other remedies that may otherwise be available, including, but not limited to, the right to obtain a lien against the undivided interest in the Project of the nonpaying Tenant in Common to the extent allowed by law. Notwithstanding the preceding provisions, however, it is expressly understood and agreed that all such rights to, or to obtain, reimbursement are subject and subordinate in all respects to the rights of any lender.

5. Approval of the Sale or Encumbrance of Project.

5.1 **Sale.** In accordance with the Management Agreement, the Asset Manager shall be entitled to seek and negotiate the terms of (a) permanent and other financing for the Project; including loans secured by the Project, (b) the sale of the Project (or portions thereof) to third-party purchasers (a "Sale") and (c) any lease of all or any portion of the Project. All of the items described in (a), (b) and (c) shall require the unanimous approval of the Tenants in Common, which approval shall be as set forth in Section 2.2. Any such written request of the Asset Manager shall be accompanied by a copy of a bona fide offer to purchase, a loan commitment letter setting forth all the material terms of the

transaction or the principal lease terms.

5.2 To the extent necessary, the proceeds of a Sale shall (i) first, be used to pay in full any loans encumbering title to the Project, (ii) second, be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Project, and (iii) third, any proceeds of a Sale remaining after payment of the items set forth above shall be paid as provided in Section 3.

6. **Possession.** The Tenants in Common intend to lease the Project at all times and no Tenant in Common shall have the right to occupy or use the Project at any time during the term of this Agreement.

7. **Transfer or Encumbrance.**

7.1 Each Tenant in Common may sell, transfer, convey, pledge, encumber or hypothecate its interest in the Project or any part thereof (each a "Transfer"), provided that any transferee shall take such interest subject to this Agreement and the Management Agreement, to the extent the Management Agreement is in effect at the time of the Transfer, and the transferor and transferee shall execute and cause to be recorded an assignment and assumption, agreement ("Assumption Agreement") whereby (i) the transferor assigns to the transferee all of its right, title and interest in and to this Agreement and the Management Agreement; and (ii) the transferee assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement and the Management Agreement with respect to the undivided interest to be transferred. Upon execution and recordation of such Assumption Agreement the transferor shall be relieved of all liability under this Agreement accruing after the date of recordation of the Assumption Agreement and the transferee shall become a party to this Agreement without further action by the other Tenants in Common. Each Tenant in Common shall be responsible for compliance with applicable securities laws with respect to any sale of its interest in the Project.

7.2 **Right of First Offer.** If a Tenant in Common (a "Selling Tenant") desires to sell its interest in the Project, then such Selling Tenant shall first allow the Asset Manager or its assigns, and second the Tenants in Common other than the Selling Tenant (each an "Offeror" and collectively the "Offerors") to make an offer to purchase the Selling Tenant's interest pursuant to the terms and conditions set forth in this Section 7.2. If a Selling Tenant desires to sell its interest in the Project, such Selling Tenant shall provide written notice (the "Notice") of its intent to sell its interest to each Offeror. The Asset Manager or its assigns shall first have the right, within thirty (30) days after receipt of such Notice pursuant to Section 10.8, to deliver a written offer to the Selling Tenant to purchase the Selling Tenant's interest in the Project. If the Selling Tenant does not accept an offer from the Asset Manager or its assigns within thirty (30) days after receipt of the Notice pursuant to Section 10.8, then the Tenants in Common other than the Selling Tenant shall have the right within the next thirty (30) days after the end of the first thirty (30) day period, to deliver an offer to the Selling Tenant to purchase the Selling Tenant's interest in the Project for a price that is greater than the price offered by the Asset

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Manager or its assigns. If the Selling Tenant does not accept the offer from either the Asset Manager or its assigns or the Tenants in Common other than the Selling Tenant, then the Selling Tenant shall be free to sell its interest in the Project to a purchaser other than an Offeror, provided that the sale of the Selling Tenant's interest to a purchaser (other than an Offeror) is for a price greater than any purchase price offered by an Offeror pursuant to this Section 7.2 and is in compliance with the terms of any loan encumbering the Project. If any Tenant in Common elects not to purchase his, her or its share of the Seller's interest, the other Tenants in Common shall be entitled to purchase additional interests based on their undivided interest in the Project.

7.3 Option to Purchase Dissenting Tenant in Common's Interest. The Tenants in Common agree that the Asset Manager or its assigns shall have the right, while this Agreement remains in effect, to purchase a Dissenting Tenant in Common's (as defined below) interest in the Project as set forth in this Section 7.3. A Dissenting Tenant in Common shall mean a Tenant in Common who votes against or fails to consent to any item that requires the unanimous approval or consent of the Tenants in Common pursuant to the terms of this Agreement when the Tenants in Common holding more than 55% of the percentage interest in the Project have voted or provided consent for such action. In order to execute this option, the Asset Manager or its assigns shall provide written notice of its election to exercise this option to the Dissenting Tenant in Common at any time prior to thirty (30) days after the approval period for such vote or consent has terminated as provided in any request for such vote or consent. In the event that the Asset Manager or its assigns exercise this purchase option, all of the Dissenting Tenant in Common's right, title and interest in its interest shall transfer to the Asset Manager or its affiliates or their assigns as of the date the election to exercise the purchase option is received by the Dissenting Tenant in Common pursuant to Section 10.8, and the Asset Manager or its assigns shall own all right, title and interest to such interest as of such date; provided, however, that the Asset Manager or its affiliates or their assigns may delay the transfer of the Interest for any length of time as specified in its election to exercise the purchase option up and through the payment date and provided, further, that the transfer, and effective date of such transfer, shall be subject to any consent of the Lender, if required. The purchase price of the Dissenting Tenants in Common interest shall be equal to the Fair Market Value of the interest (as defined in Section 8 of this Agreement) of the Dissenting Tenant in Common. Such purchase price sale shall be paid by the Asset Manager or its affiliates or their assigns within forty-five (45) days of the determination of the Fair Market Value of the Project, and the obligation to pay the purchase price shall bear interest at the short term Applicable Federal Rate from the date of transfer through the payment date. The purchaser and seller shall begin negotiation of the Fair Market Value of the Project within ten (10) days after the date of the written notice from the Asset Manager or assignee and shall follow the procedures set forth in Section 8. The allocation of the costs and liabilities shall be subject to the terms set forth in Section 8. If the Asset Manager or its assigns does not provide written notice of its election to exercise this option to the Dissenting Tenant in Common at any time prior to thirty (30) days after the approval period for such vote or consent has terminated as provided in any request for such vote or consent, any of the Tenants in Common other than the Dissenting Tenant in Common may elect to exercise this option by providing

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written notice of its election to exercise this option to the Dissenting Tenant in Common at any time prior to sixty (60) days after the approval period for such vote or consent has terminated as provided in any request for such vote or consent. If any Tenant in Common elects not to purchase his, her or its share of the Seller's interest, the other Tenants in Common shall be entitled to purchase additional interests based on their undivided interest in the Project.

7.4 Defaulting Tenant in Common. The Tenants in Common agree that the Asset Manager or any of its affiliates or their assigns shall have the right, while this Agreement remains in effect, to purchase a Defaulting Tenant in Common's (as defined below) interest in the Project as set forth in this Section 7.4. A Defaulting Tenant in Common shall mean a Tenant in Common who is in default under any loan documents attributable to any loan secured by the Project, the Management Agreement or this Agreement. In order to execute this option, the Asset Manager or its affiliate shall provide written notice of its election to exercise this option to the Defaulting Tenant in Common during the period such Defaulting Tenant in Common is in default or for a period of sixty (60) days thereafter. In the event that the Asset Manager or its affiliates or their assigns exercise this purchase option, all of the Defaulting Tenant in Common's right, title and interest in its interest shall transfer to the Asset Manager or its affiliates or their assigns as of the date the election to exercise the purchase option is received by the Defaulting Tenant in Common pursuant to Section 10.8, and the Asset Manager shall own all right, title and interest to such interest as of such date; provided, however, that the Asset Manager or its affiliates or their assigns may delay the transfer of the Interest for any length of time as specified in its election to exercise the purchase option up and through the payment date and provided, further, that the transfer, and effective date of such transfer, shall be subject to any consent of the Lender, if required. The purchase price of the Defaulting Tenants in Common's interest shall be equal to the Fair Market Value of the Interest (as defined in Section 8 of this Agreement) of the Defaulting Tenant in Common. Such purchase price sale shall be paid by the Asset Manager or its affiliates or their assigns within thirty (30) days of the determination of the Fair Market Value of the Project, and the obligation to pay the purchase price shall bear interest at the short term Applicable Federal Rate from the date of transfer through the payment date. The purchaser and seller shall begin negotiation of the Fair Market Value of the Project within thirty (30) days after the date of the written notice from the Asset Manager or its affiliates or their assigns and shall follow the procedures set forth in Section 8. The allocation of the costs and liabilities shall be subject to the terms set forth in Section 8.

8. Right of Partition. The Tenants in Common agree that any Tenant in Common and any of its successors-in-interests shall have the right, while this Agreement remains in effect, to have the Project partitioned, and to file a complaint or institute any proceeding at law or in equity to have the Project partitioned in accordance with and to the extent provided by applicable law. The Tenants in Common acknowledge that partition of the Project may result in a forced sale by all of the Tenants in Common. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the Tenants in Common, the Tenants in Common agree that, as a condition precedent to filing a partition action, the Tenant in Common filing such action ("Seller") shall first make a written offer ("Offer") to sell its undivided interest first to the Asset

Manager or its assigns and second to the other Tenants in Common at a price equal to the Fair Market Value of the Interest (as defined below) of Seller's undivided interest. If the Asset Manager does not accept such Offer, then the other Tenants in Common shall be entitled to purchase a portion of the Seller's interest in proportion to their undivided interest in the Project. If any Tenant in Common elects not to purchase his, her or its share of the Seller's interest, the other Tenants in Common shall be entitled to purchase additional interests based on their undivided interest in the Project. "Fair Market Value of the Interest" shall mean the fair market value of Seller's undivided interest (determined by multiplying the partitioning Tenant in Common's percentage interest in the Project on the date of the Offer by the Fair Market Value of the Project and subtracting therefrom (i) any liabilities secured by the Seller's interest in the Project which the Purchaser agrees to assume or take subject to, (ii) Seller's proportionate share of any fee or other amount that would be payable to the Asset Manager or the Property Manager or any affiliates (including any real estate commission) under the Management Agreement upon the sale of the Project at a price equal to the Fair Market Value of the Project and (iii) selling, prepayment or other costs that would apply in the event the Project was sold on the date of the Offer) as determined in accordance with the procedures set forth below, including any unpaid advanced made pursuant to Section 4.2 on behalf of Seller. The Asset Manager shall have thirty (30) days after delivery of the Offer to accept the Offer. If the Asset Manager does not accept the offer within such thirty (30) day period, the other Tenants in Common shall have the right within the next thirty (30) days to accept the Offer. If the Asset Manager or any or all of the other Tenants in Common ("Purchaser") accept the Offer, Seller and Purchaser shall commence negotiation of the Fair Market Value of the Project within fifteen (15) days after the Offer is accepted. If the parties do not agree, after good faith negotiations, within thirty (30) days, then each party shall submit to the other a proposal containing the Fair Market Value of the Project the submitting party believes to be correct ("Proposal"). If either party fails to timely submit a Proposal, the other party's submitted Proposal shall determine the Fair Market Value of the Project. If both parties timely submit Proposals, then the Fair Market Value of the Project shall be determined by final and binding arbitration in accordance with the procedures set forth below. The parties shall meet within five (5) days after delivery of the last Proposal and make a good faith attempt to mutually appoint a certified MAI real estate appraiser as an arbitrator who shall have been active full-time over the previous five (5) years in the appraisal of comparable properties located in the county in which the Project is located to act as the arbitrator. If the parties are unable to agree upon a single arbitrator, then the parties each shall, within ten (10) days after the meeting, select an arbitrator that meets the foregoing qualifications. The two (2) arbitrators so appointed shall, within ten (10) days after their appointment, appoint a third arbitrator meeting the foregoing qualifications. The determination of the arbitrator(s) shall be limited solely to the issue of whether Seller's or Purchaser's Proposal most closely approximates the Project's fair market value. The decision of the single arbitrator or of the arbitrator(s) shall be made within forty-five (45) days after the appointment of a single arbitrator or the third arbitrator, as applicable. The arbitrator(s) shall have no authority to create an independent structure of fair market value or prescribe or change any or several of the components or the structure thereof; the sole decision to be made shall be which of the parties' Proposals shall determine the Fair Market Value of the Project. The decision of the single arbitrator or majority of the three (3) arbitrators shall be binding upon the parties. If either party fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by one of them shall reach a decision which shall be binding upon the parties. The cost of the arbitrators shall be paid

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equally by Seller and Purchaser. The arbitration shall be conducted in Omaha, Nebraska in accordance with the Nebraska Uniform Arbitration Act, Nebraska Rev. Stat. §25-2601 et. seq. as modified by this Agreement. The parties agree that Federal Arbitration Act, Title 9 of the United States Code, shall not apply to any arbitration hereunder. The parties shall have no discovery rights in connection with the arbitration. The decision of the arbitrator(s) may be submitted to any court of competent jurisdiction by the party designated in the decision. The party designated in the decision shall submit to the court a form of judgment incorporating the decision of the arbitrator(s), and such judgment, when signed by such judge, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of the court. If one party refuses to arbitrate an arbitrable dispute and the party demanding arbitration obtains a court order directing the other party to arbitrate, the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter. In addition, if one party refuses arbitration and is subsequently ordered by a court to arbitrate, such party shall also pay all of the arbitration costs and expenses. By executing this Agreement each Tenant in Common is agreeing to have any dispute arising out of the matters included in the arbitration of disputes provision decided by neutral arbitration as provided by Nebraska law and each Tenant in Common is giving up all rights it might possess to have the dispute litigated in a court or, jury trial. By executing this Agreement you are giving up your judicial rights to discovery and appeal. If a Tenant in Common refuses to submit to arbitration after agreeing to this provision, the Tenant in Common may be compelled to arbitrate under the authority of the Nebraska Uniform Arbitration Act, Nebraska Rev. Stat. §25-2601 et. seq.. Each Tenant in Common's agreement to this arbitration provision is voluntary. The closing of the purchase of Seller's interest shall occur at a mutually agreeable title company where the Project is located within thirty (30) days from the date a Fair Market Value of the Project is determined, whether by agreement or arbitration. Closing costs and prorations shall be allocated as is standard practice where the Project is located. The Purchaser shall take Seller's interest subject to the liabilities included in the determination of Fair Market Value of the Project secured by the Project and the Management Agreement which may include unpaid fees due to the Asset Manager or Property Manager.

9. Bankruptcy Option.

9.1 **Option.** If, during the term of this Agreement, a Tenant in Common is Bankrupt, the Asset Manager or its assignee shall have the right, to be exercised by written notice ("Bankruptcy Call Notice") to the Bankrupt Tenant in Common, to purchase all of the Bankrupt Tenant in Common's interest in the Project. Upon receipt of the Bankruptcy Call Notice, the Bankrupt Tenant in Common shall be obligated to provide the Asset Manager and/or its assignee or, in the event that the Asset Manager or its assignee does not elect to exercise the option within thirty (30) days of the receipt of the Bankruptcy Call Notice, the other Tenants in Common have an option to purchase the Bankrupt Tenant in Common's entire interest in the Project for the Fair Market Value of the Bankrupt Tenant in Common's interest in the Project as determined under Section 8. Such purchase and sale shall be closed within thirty (30) days of the determination of the Fair Market Value of the Project. The allocation of the costs and liabilities shall be subject to the terms set forth in Section 8.

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9.2 Bankrupt. For purposes of this Agreement, a Tenant in Common shall be considered Bankrupt if such Tenant in Common: (1) is unable to pay debts as they come due, including any debt associated with the Project; (2) admits in writing to his, her or its inability to pay debts as they due, including any debt associated with the Project; (3) makes a general assignment for the benefit of creditors; (4) files any petition or answer seeking to adjudicate it bankrupt or insolvent; (5) seeks liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of its debts; (6) seeks, consents to or acquiesces in the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official or for any substantial part of its property; (7) the entry of an order for relief or approving a petition for relief or reorganization, arrangement, composition readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation or the filing of any such petition that is not dismissed in sixty (60) days; (8) entry of an order appointing a trustee, custodian, receiver or liquidator of all or any substantial portion of its property, which order is not dismissed within sixty (60) days or (9) is considered bankrupt under the loan documents attributable to any loan which is secured by the Project.

9.3 Right of First Refusal. If, under federal bankruptcy law, similar debtor relief laws, or other laws affecting the Project, the option to purchase granted under this Section 9 is voided or declared unenforceable, the Asset Manager or its assignee shall have a right of first refusal to buy any interest in the Project of a Bankrupt Tenant in Common in the event of any proposed transfer by a trustee, receiver, conservator, liquidator, guardian, or other transferee. Such right of first refusal shall provide that the Asset Manager or its assignee may purchase the Bankrupt Tenant in Common's interest in the Project at the same price and on the same terms as such Project is proposed to be sold by such trustee, receiver, conservator, liquidator, guardian or other transferee.

10. General Provisions.

10.1 Mutuality Reciprocity Runs With the Land. All provisions, conditions, covenants, restrictions, obligations and agreements contained herein or in the Management Agreement are made for the direct, mutual and reciprocal benefit of each and every part of the Project; shall be binding upon and shall inure to the benefit of each of the Tenants in Common and their respective heirs, personal representatives, successors, assigns, devisees, lessees and all other persons acquiring any undivided interest in the Project or any portion thereof whether by operation of law, or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Project of each Tenant in Common in favor of the interest of every other Tenant in Common; shall create reciprocal rights and obligations between the respective Tenants in Common, their interests in the Project, and their Successors; and shall, as to each of the Tenants in Common and their Successors operate as covenants running with the land, for the benefit of the other Tenants in Common pursuant to applicable law. It is expressly agreed that each covenant contained herein or in the Management Agreement (i) is for the benefit of and is a burden upon the undivided interests in the Project of each of the Tenants in Common, (ii) runs with the

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undivided interest in the Project of each Tenant in Common and (iii) benefits and is binding upon each Successor owner during its ownership of any undivided interest in the Project, and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein or in the Management Agreement, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement or the Management Agreement is contained in the instrument conveying such interest in the Project to such person or entity. The Tenants in Common agree that any Successor shall become a party to this Agreement and the Management Agreement upon acquisition of an undivided interest in the Project as if such person was a Tenant in Common initially executing this Agreement.

10.2 Binding Arbitration. Any controversy between the parties hereto arising out of or related to this Agreement or the breach thereof or an investment in the tenant in common interests in the Project shall be settled by arbitration in Douglas County, Nebraska, in accordance with the rules of the American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action. The arbitration panel shall consist of one member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within thirty (30) days following notice by one party that he, she or it desires that a matter be arbitrated. If there was no mediation and the parties are unable within such thirty (30) day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the office of the American Arbitration Association nearest to the City of Omaha, Nebraska, which arbitrator shall be experienced in the area of real estate and who shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys' fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by the losing party or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within thirty (30) days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event, each Tenant in Common shall be entitled to discovery in accordance with the Nebraska Uniform Arbitration Act, Nebraska Rev. Stat. §25-2601 et. seq.

10.3 Attorneys' Fees. If any action or proceeding is instituted between all or any of the Tenants in Common arising from or related to or with this Agreement, the Tenant in Common or Tenants in Common prevailing in such action or proceeding shall be entitled to recover from the other Tenant in Common or Tenants in Common all of its or their costs incurred in such action or proceeding, including, without limitation, attorneys' fees and costs as fixed by the court or arbitrator therein.

10.4 Entire Agreement. This Agreement, together with the Management

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Agreement, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

10.5 Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of Nebraska without regard to choice of law rules.

10.6 Venue. Any action relating to or arising out of this Agreement shall be brought only in a court of competent jurisdiction located in Sarpy County, Nebraska .

10.7 Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. No act of any Tenant in Common shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Tenant in Common affected. Any Tenant in Common hereto may specifically waive any breach of this Agreement by any other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

10.8 Notice and Payments. Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the party for whom intended, as follows:

To the Tenants in Common at the addresses specified in Exhibit A hereto.

Any party hereto may from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) as of the third business day after mailing by United States registered or certified mail, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

10.9 Successors and Assigns. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest, assigns, and legal representatives of the parties hereto. Any assignee of a Tenant in Common shall be considered a Tenant in Common.

10.10 Term. This Agreement shall commence as of the date hereof and shall terminate at such time as the Tenants in Common or their successors-in-interest or assigns no longer own the Project as tenants-in-common. In no event shall this Agreement continue beyond thirty years after the date this Agreement or memorandum

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thereof is recorded with the Register of Deeds of Sarpy County, Nebraska. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetency of a Tenant in Common shall not cause the termination of this Agreement.

10.11 **Waivers.** No act of any Tenant in Common shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Tenant in Common affected. Any Tenant in Common hereto may specifically waive any breach of this Agreement by any other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

10.12 **Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

10.13 **Severability.** If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

10.14 **APPLICABLE SECURITIES LAWS.** NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE SECURITIES OFFERED HEREBY OR PASSED UPON THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION WITH THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

10.15 **Time Is of the Essence.** Time is of the essence of each and every provision of this Agreement.

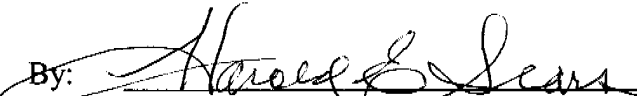
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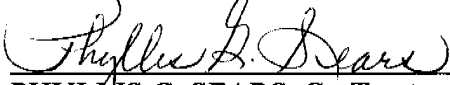
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

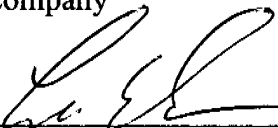
TENANTS IN COMMON:

HAROLD E. AND PHYLLIS G. SEARS LIVING
TRUST u/t/d 4/11/95

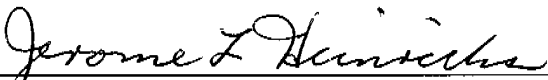
✓ By: 
HAROLD E. SEARS, Co-Trustee

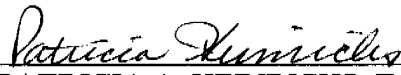
X By: 
PHYLLIS G. SEARS, Co-Trustee

WAKELEY ENTERPRISES, L.L.C., a Nebraska limited
liability company

By: 
Title: Managing Member

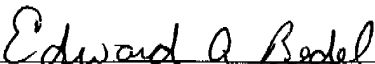
JEROME L. HEINRICHS LIVING TRUST, dated
April 28, 2004, and any amendments thereto

By: 
JEROME L. HEINRICHS, Trustee

By: 
PATRICIA A. HEINRICHS, Trustee

GREGORY SCHLEISMAN FAMILY TRUST

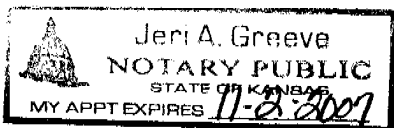
By: , Trustee
THOMAS W. SCHLEISMAN, Trustee


EDWARD A. BEDEL

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STATE OF Kansas)
COUNTY OF County) ss:

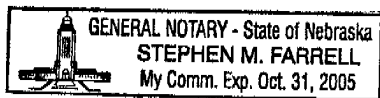
The foregoing instrument was acknowledged before me this 21st day of June 2005, by Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95.



Jeri A Greeve
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss:

The foregoing instrument was acknowledged before me this 28 day of June 2005, by Lee Ehler, Manager/Member of Wakeley Enterprises, L.L.C., a Nebraska limited liability company, on behalf of such limited liability company.

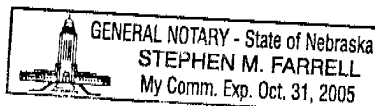


Stephen M Farrell
Notary Public

STATE OF NEBRASKA)
COUNTY OF Douglas) ss:

The foregoing instrument was acknowledged before me this 29th day of June 2005, by Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees of the Jerome L. Heinrichs Living Trust dated April 28, 2004, on behalf of such Living Trust.

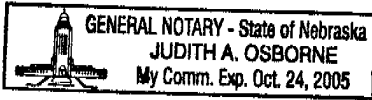
Stephen M Farrell
Notary Public



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STATE OF Nebraska)
COUNTY OF Douglas) ss:

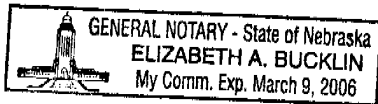
The foregoing instrument was acknowledged before me this 24~~th~~ day of June 2005, by Thomas W. Schleisman, Trustee of the Gregory Schleisman Family Trust, on behalf of such Family Trust.



Judith A. Osborne
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss:

The foregoing instrument was acknowledged before me this 1 day of July 2005, by Edward A. Bedel.



Elizabeth A. Bucklin
Notary Public

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EXHIBITS

Exhibit A Tenants in Common and Percentage Interests

Exhibit B Legal Description of the Project

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EXHIBIT A

Tenants in Common and Percentage Interests

<u>Name</u>	<u>Percentage Interest</u>	<u>Address</u>
Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95	25%	Harold Sears 2349 SE Crestwater Drive Topeka, KS 66605
Wakeley Enterprises, L.L.C., a Nebraska limited liability company	25%	Lee Ehlers c/o Investors Realty 11303 Davenport Omaha, NE 68154
Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees, or their successors in trust, under Jerome L. Heinrichs Living Trust, dated April 28, 2004, and any amendments thereto	20%	Jerry Heinrichs c/o Investors Realty 11301 Davenport Omaha, NE 68154
Thomas W. Schleisman, Trustee of the Gregory Schleisman Family Trust	15%	Thomas Schleisman c/o Schleisman White & Associates P.C. 13434 "A" Street Omaha, NE 68144
Edward A. Bedel	<u>15%</u>	Edward A. Bedel 1722 South 154 th Circle Omaha, NE 68144
Total	100%	

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EXHIBIT B

Legal Description of Project

Lot 6, Papio Valley 2 Business Park, a Subdivision in Sarpy County, Nebraska.

2005-22327T

EXHIBIT C

PROPERTY AND ASSET MANAGEMENT AGREEMENT