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By

RICHARD H. TAKECHI  
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OMAHA REAL ESTATE INVESTMENT PARTNERSHIP II, L.L.C.,  
(Borrower)

to

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY  
~~SPENCER TITLE SERVICES INC~~  
(Trustee)

for the benefit of

CORNERSTONE CAPITAL CORPORATION,  
(Lender)

**DEED OF TRUST AND  
SECURITY AGREEMENT**

Dated: *Jay*  
~~June 14~~, 1999  
Location: Omaha, Nebraska

~~UPON RECORDATION RETURN TO:~~  
Cadwalader, Wickersham & Taft  
227 West Trade Street, Suite 2400  
Charlotte, North Carolina 28202  
Attention: Anderson D. Caperton, Esq.

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**TABLE OF CONTENTS**

Page

**ARTICLE I - GRANTS OF SECURITY**

Section 1.1	PROPERTY ENCUMBERED.....	1
Section 1.2	ASSIGNMENT OF RENTS.....	3
Section 1.3	SECURITY AGREEMENT.....	3
Section 1.4	PLEDGE OF MONIES HELD.....	4

**ARTICLE II - DEBT AND OBLIGATIONS SECURED**

Section 2.1	DEBT AND OBLIGATIONS SECURED.....	4
-------------	-----------------------------------	---

**ARTICLE III - BORROWER COVENANTS**

Section 3.1	PAYMENT OF DEBT.....	4
Section 3.2	INSURANCE.....	5
Section 3.3	PAYMENT OF TAXES, ETC.....	8
Section 3.4	RESERVES.....	8
Section 3.5	CONDEMNATION.....	9
Section 3.6	LEASES AND RENTS.....	9
Section 3.7	MAINTENANCE OF PROPERTY.....	10
Section 3.8	WASTE.....	11
Section 3.9	COMPLIANCE WITH LAWS.....	11
Section 3.10	BOOKS AND RECORDS.....	11
Section 3.11	PAYMENT FOR LABOR AND MATERIALS.....	12
Section 3.12	MANAGEMENT.....	12
Section 3.13	PERFORMANCE OF OTHER AGREEMENTS.....	12
Section 3.14	CHANGE OF NAME, IDENTITY OR STRUCTURE.....	12
Section 3.15	EXISTENCE.....	13
Section 3.16	TRUSTEE FEES.....	13

**ARTICLE IV - SPECIAL COVENANTS**

Section 4.1	SINGLE PURPOSE ENTITY.....	13
Section 4.2	RESTORATION.....	14

**ARTICLE V - REPRESENTATIONS AND WARRANTIES**

Section 5.1	WARRANTY OF TITLE.....	15
Section 5.2	AUTHORITY.....	15
Section 5.3	LEGAL STATUS AND AUTHORITY.....	15
Section 5.4	VALIDITY OF DOCUMENTS.....	15

Section 5.5	LITIGATION.....	16
Section 5.6	STATUS OF PROPERTY .....	16
Section 5.7	NO FOREIGN PERSON .....	16
Section 5.8	SEPARATE TAX LOT.....	16
Section 5.9	ERISA COMPLIANCE.....	16
Section 5.10	LEASES .....	17
Section 5.11	FINANCIAL CONDITION .....	17
Section 5.12	BUSINESS PURPOSES .....	17
Section 5.13	TAXES .....	17
Section 5.14	MAILING ADDRESS .....	17
Section 5.15	NO CHANGE IN FACTS OR CIRCUMSTANCES.....	17
Section 5.16	DISCLOSURE.....	17
Section 5.17	THIRD PARTY REPRESENTATIONS .....	18
Section 5.18	ILLEGAL ACTIVITY .....	18
Section 5.19	USE OF PROCEEDS; MARGIN REGULATIONS.....	18

#### ARTICLE VI - OBLIGATIONS AND RELIANCES

Section 6.1	RELATIONSHIP OF BORROWER AND LENDER.....	18
Section 6.2	NO LENDER OBLIGATIONS.....	18

#### ARTICLE VII - FURTHER ASSURANCES

Section 7.1	RECORDING OF SECURITY INSTRUMENT, ETC.....	19
Section 7.2	FURTHER ACTS, ETC.....	19
Section 7.3	CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.....	19
Section 7.4	ESTOPPEL CERTIFICATES.....	20
Section 7.5	REPLACEMENT DOCUMENTS.....	20

#### ARTICLE VIII - DUE ON SALE/ENCUMBRANCE

Section 8.1	LENDER RELIANCE .....	20
Section 8.2	NO SALE/ENCUMBRANCE.....	20
Section 8.3	SALE/ENCUMBRANCE DEFINED.....	21
Section 8.4	LENDER'S RIGHTS .....	22

#### ARTICLE IX - DEFAULT

Section 9.1	EVENTS OF DEFAULT .....	22
-------------	-------------------------	----

#### ARTICLE X - RIGHTS AND REMEDIES

Section 10.1	REMEDIES .....	24
Section 10.2	APPLICATION OF PROCEEDS .....	25
Section 10.3	RIGHT TO CURE DEFAULTS.....	25

Section 10.4	ACTIONS AND PROCEEDINGS .....	26
Section 10.5	RECOVERY OF SUMS REQUIRED TO BE PAID .....	26
Section 10.6	EXAMINATION OF BOOKS AND RECORDS.....	26
Section 10.7	OTHER RIGHTS, ETC.....	26
Section 10.8	RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. ....	27
Section 10.9	VIOLATION OF LAWS .....	27
Section 10.10	RECOURSE AND CHOICE OF REMEDIES .....	27
Section 10.11	RIGHT OF ENTRY.....	28
Section 10.12	DEFAULT INTEREST AND LATE CHARGES .....	28

#### ARTICLE XI - INDEMNIFICATION

Section 11.1	GENERAL INDEMNIFICATION .....	28
Section 11.2	MORTGAGE AND/OR INTANGIBLE TAX .....	29
Section 11.3	ERISA INDEMNIFICATION .....	29
Section 11.4	DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES .....	29

#### ARTICLE XII - WAIVERS

Section 12.1	WAIVER OF COUNTERCLAIM.....	29
Section 12.2	MARSHALING AND OTHER MATTERS.....	29
Section 12.3	WAIVER OF NOTICE .....	30
Section 12.4	SOLE DISCRETION OF LENDER .....	30
Section 12.5	SURVIVAL.....	30
Section 12.6	WAIVER OF TRIAL BY JURY .....	30

#### ARTICLE XIII - EXCULPATION

Section 13.1	EXCULPATION .....	30
Section 13.2	RESERVATION OF CERTAIN RIGHTS .....	31
Section 13.3	EXCEPTIONS TO EXCULPATION .....	31
Section 13.4	RECOURSE.....	31
Section 13.5	BANKRUPTCY CLAIMS.....	32

#### ARTICLE XIV - NOTICES

Section 14.1	NOTICES.....	32
--------------	--------------	----

#### ARTICLE XV - APPLICABLE LAW

Section 15.1	CHOICE OF LAW.....	33
Section 15.2	USURY LAWS .....	33
Section 15.3	PROVISIONS SUBJECT TO APPLICABLE LAW.....	33

ARTICLE XVI - SECONDARY MARKET

Section 16.1 TRANSFER OF LOAN ..... 34

ARTICLE XVII - COSTS

Section 17.1 PERFORMANCE AT BORROWER'S EXPENSE ..... 34  
Section 17.2 ATTORNEY'S FEES FOR ENFORCEMENT ..... 34

ARTICLE XVIII - DEFINITIONS

Section 18.1 GENERAL DEFINITIONS ..... 35  
Section 18.2 SPECIFIC DEFINITIONS ..... 35

ARTICLE XIX - LETTER OF CREDIT.

Section 19.1 Administration of Letter of Credit AND PURCHASE OF GIC..... 37

ARTICLE XX - MISCELLANEOUS PROVISIONS

Section 20.1 NO ORAL CHANGE..... 37  
Section 20.2 LIABILITY ..... 37  
Section 20.3 INAPPLICABLE PROVISIONS ..... 37  
Section 20.4 HEADINGS, ETC ..... 38  
Section 20.5 DUPLICATE ORIGINALS; COUNTERPARTS..... 38  
Section 20.6 NUMBER AND GENDER ..... 38  
Section 20.7 SUBROGATION ..... 38  
Section 20.8 ENTIRE AGREEMENT ..... 38

ARTICLE XXI - APPLICATION OF MONEYS

Section 21.1 Moneys Under the Lease..... 38

THIS DEED OF TRUST AND SECURITY AGREEMENT (the "Security Instrument") is made as of the <sup>July</sup> ~~June~~ 14<sup>th</sup> day of ~~June~~, 1999, by Omaha Real Estate Investment Partnership II, L.L.C., a Delaware limited liability company, having its principal place of business at 10350 Bren Road West, Minnetonka, Minnesota 55343 ("Borrower") as trustor, to ~~Spence Title Services~~ <sup>\*\*\*</sup> ~~XXX~~, having an address at 1901 ~~Harvey~~ Street, Suite 210, Omaha, Nebraska 68102 ("Trustee"), for the benefit of Cornerstone Capital Corporation, an Ohio corporation, having an address at 6631 Commerce Parkway, Suite P, Dublin, Ohio 43017, together with its successors and assigns ("Lender").

#### RECITALS:

Borrower by its promissory note of even date herewith given to the Lender is indebted to the Lender in the principal sum of Thirty-Four Million Nine Hundred Forty-Two Thousand Six Hundred Five and 54/100 Dollars (\$34,942,605.54) in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment and performance of the Obligations (as defined in Article 2).

Borrower is duly authorized to issue the Note and Borrower is duly authorized to execute and deliver this Security Instrument, and all actions required by law and all actions of Borrower and the Trustee required therefor have been duly taken.

#### ARTICLE I - GRANTS OF SECURITY

Section 1.1 PROPERTY ENCUMBERED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, in trust with Power of Sale, and does grant a security interest for the benefit of Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"): (a) the real property described in Exhibit A attached hereto and made a part hereof (the "Land"); (b) all additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument; (c) the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land and owned by Borrower (the "Improvements"); (d) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements

\*\*\* OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

and every part and parcel thereof, with the appurtenances thereto; (e) all furnishings, machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above; (f) all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements including, without limitation, that certain lease (the "Net Lease") dated as of May 20, 1998, between Opus Estates Corporation, as landlord (predecessor in interest to Borrower), and ConAgra, Inc., as tenant (the "Net Lease Tenant"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt; (g) all rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under any and all lease guaranties, letters of credit and any other credit support (individually, a "Lease Guaranty" and collectively, the "Lease Guaranties") given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor" and collectively, the "Lease Guarantors"), including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt (as hereinafter defined)), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties; (h) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property; (i) all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property; (j) all of Borrower's claims and rights to the payment of damages arising from any rejection by a lessee of any lease or cancellation by a Lease Guarantor of its Lease Guaranty under the Bankruptcy Code; (k) Borrower's interest in all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction; (l) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims; Borrower's

interest (m) in the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property; (n) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder; (o) all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property; (p) the Letter of Credit (hereinafter defined) and the GIC (hereinafter defined); and (q) any and all other rights of Borrower in and to the items set forth in Subsections (a) through (p) above.

### Section 1.2 ASSIGNMENT OF RENTS.

(a) Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents thereunder; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only.

(b) Without limitation to Section 1.2(a), Borrower hereby absolutely and unconditionally assigns to Lender (i) Borrower's right, title and interest in and Borrower's right pursuant to the Net Lease to accept or reject any offers to purchase the Property and receive the purchase proceeds of any such sale, and (ii) Borrower's right, title and interest in and Borrower's right to accept or reject any offers to terminate the Net Lease or to receive any termination payments payable with respect to the Net Lease, for which purposes Borrower shall obtain the express written consent of Lender, which consent shall be given if the Debt is paid in full, together with any Prepayment Consideration, if applicable or shall otherwise be in Lender's sole discretion, prior to accepting or rejecting any offers to terminate the Net Lease or to receive any termination payments payable with respect to the Net Lease. Borrower hereby acknowledges and agrees that any and all such payments shall be paid directly to Lender, and Lender shall apply any such sums to the payment of the Debt (including, but not limited to, any prepayment consideration payable under the Note as a result of such payment) in such order of priority as Lender shall in its sole discretion determine. It is further agreed that any purported rejection or acceptance by Borrower of an offer to terminate the Net Lease or to receive any termination payments payable with respect to the Net Lease without the express written consent of Lender shall be void and of no effect.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.1), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code.



Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (as defined in Section 3.4), Net Proceeds (as defined in Section 4.2), and condemnation awards or payments described in Section 3.5 (collectively, "Deposits"), as additional security for the Obligations (as hereinafter defined) until expended or applied as provided in this Security Instrument.

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD, IN TRUST WITH POWER OF SALE the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations (as defined in Article 2) as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

#### ARTICLE II - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, default interest, late charges, prepayment premiums and other sums, as provided in the Note, this Security Instrument or the other Loan Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the other Loan Documents; (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and (e) the performance of each obligation of Borrower contained in this Security Instrument, the Note and any other documents or instruments which now or shall hereafter wholly or partially secure or guarantee payment of the Note or which have otherwise been executed or are hereafter executed by Borrower and/or any other person or entity in connection with the loan (the "Loan") evidenced by the Note (the Note, this Security Instrument and such other documents and instruments being hereinafter referred to collectively as the "Loan Documents") and in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part thereof (collectively, the "Other Obligations"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations." All the covenants, conditions and agreements contained in the Note and the other Loan Documents are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

#### ARTICLE III - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note, this Security Instrument and the other Loan Documents.

Section 3.2 INSURANCE.

(a) Borrower shall obtain and maintain, or cause the Net Lease Tenant to maintain, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions; (C) providing for a deductible of not greater than \$100,000; and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses. If any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", Borrower shall obtain flood hazard insurance in an amount equal to the lesser of (a) the outstanding principal balance of the Note or (b) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require. In addition, in the event the Property is located in an area with a high degree of seismic activity, Borrower shall obtain earthquake insurance in amounts and in form and substance satisfactory to Lender;

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined single limit (including "umbrella" coverage in place) of not less than \$3,000,000 or, if any of the Improvements contain elevators, \$5,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) blanket contractual liability for all written and oral contracts, to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Subsection 3.2(a)(i); and (C) in an amount equal to 100% of the projected gross income from the Property for a period of twelve (12) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All insurance proceeds payable to Lender pursuant to this Subsection shall be held by Lender and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.2(a)(i) written in a so-called builder's risk completed value form on a non-reporting basis;

(v) if applicable, workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 aggregate coverage for disease in respect of any work or operations on or about the Property, or in connection with the Property or its operation;

(vi) if applicable, comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender;

(vii) any insurance required by Lender with respect to the rights of the tenant under the Net Lease to terminate the Net Lease or abate Rents as a result of any casualty or condemnation affecting the Property;

(viii) without limitation to the foregoing, any insurance which Borrower is required to provide and maintain pursuant to the terms and conditions of the Net Lease; and

(ix) such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Subsection 3.2(a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be subject to the approval of Lender as to insurance companies, amounts, forms, deductibles, loss payees and insureds. The insurance companies must have a rating of "A" or better for claims paying ability assigned by Moody's Investors Service, Inc. and Standard & Poor's Rating Group. Each such insurer shall be referred to herein as a "Qualified Insurer". Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Subsection 3.2(a), certified copies of the Policies marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender; provided, however, that in the case of renewal Policies, Borrower may furnish Lender with binders therefore to be followed by the original Policies when issued.

(c) Borrower shall not obtain (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Lender and Lender's interest is included therein as provided in this Security Instrument and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Subsection 3.2(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket Policy, Borrower shall notify Lender of the same and shall cause certified copies of each Policy to be delivered as required in

Subsection 3.2(b). Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Subsection 3.2(a).

(d) All Policies of insurance provided for or contemplated by Subsection 3.2(a), except for the Policy referenced in Subsection 3.2(a)(v), shall name Lender and Borrower as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) Borrower shall furnish to Lender, on or before thirty (30) days after the close of each of Borrower's fiscal years, a statement certified by Borrower or a duly authorized officer of Borrower of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance and, if requested by Lender, verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower in the case of an emergency as determined by Lender in its sole discretion, or otherwise five (5) days after notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deem appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by this Security Instrument and shall bear interest in accordance with Section 10.3 hereof.

(g) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "Restoration") and otherwise in accordance with Section 4.2 of this Security Instrument, except in instances where Lender has failed or elected not to disburse Net Proceeds to Borrower under such Section 4.2 (provided that such exception shall not apply if the failure to disburse is attributable to Borrower's failure to comply with the conditions set forth in Clauses (A) or (C) of Subsection 4.2(b)(i) or in Subsection 4.2(b)(ii) or any other conditions set forth in Section 4.2 which Borrower has the practical ability to satisfy). Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. Notwithstanding the foregoing, to the extent that the Net Lease Tenant continues to make payment of rent pursuant to the Net Lease and continues to perform its restoration obligations under the Net Lease, the Borrower shall not have any obligation to repair or restore the Premises.

(h) In the event of foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to such policies then in force concerning the Property and all proceeds payable thereunder shall

thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

(i) Notwithstanding the foregoing provisions of this Section 3.2, to the extent that the Net Lease Tenant (A) has already procured the coverages required hereby and is maintaining the coverages provided hereby, or (B) has already procured the coverages required under the Net Lease and is maintaining the coverages required under the Net Lease, the Borrower shall not be required to obtain the insurance requirements set forth in (a) – (h) above.

Section 3.3 PAYMENT OF TAXES, ETC. Borrower shall promptly pay or cause the tenant under the Net Lease to pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the time same become delinquent. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

Section 3.4 RESERVES. Borrower shall not be required to make payments to the Escrow Fund to the extent, and only to the extent, that the Net Lease Tenant under the Net Lease is responsible for payment of Taxes and Insurance Premiums directly to the relevant taxing authorities and insurers and the Net Lease Tenant actually makes payment of Taxes and Insurance Premiums directly to the relevant taxing authorities and insurers. In the event the Net Lease Tenant is not responsible for payment of Taxes and Insurance Premiums directly to the relevant taxing authorities and insurers, (a) Borrower shall pay to Lender on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "Escrow Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.2 and 3.3 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.2 and 3.3 hereof, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to

make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower. The Escrow Fund is to be held by Lender solely for the protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit for the sums actually received.

Section 3.5 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall enforce the Net Lease Tenant's obligations with respect to any such actual or threatened condemnation, and shall consult with Lender, its attorneys and experts and the attorneys and experts of the Net Lease Tenant, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall enforce the Net Lease Tenant's obligations with respect to the Restoration of the Property and otherwise comply with the provisions of Section 4.2 of this Security Instrument.

Section 3.6 LEASES AND RENTS.

(a) Borrower shall promptly and fully keep, observe and perform, or cause to be kept, observed or performed, all of the terms, covenants, provisions and agreements imposed upon or assumed by Borrower under the Net Lease, and any leases, subleases, licenses, concessions and occupancy agreements in connection therewith or substitution therefor and any amendments, modifications or supplements thereof, and Borrower shall not do or fail to do, or permit or fail to permit to be done any act or thing, the doing or omission of which (i) will give the tenant under the Net Lease a right to terminate the Net Lease or to abate the rental or other material payment due thereunder or (ii) release any party from liability under or with respect to the Net Lease. Borrower shall not under any circumstances modify, cancel, amend or terminate the Net Lease or any Lease Guaranty without Lender's prior written consent, and Borrower and the Net Lease Tenant acknowledge and agree that any attempted modification, cancellation, amendment or termination of the Net Lease without such consent shall be void and of no force or effect whatsoever. The foregoing sentence shall not apply to those termination rights exercisable by the Net Lease Tenant pursuant to the Net Lease which do not require the consent or approval of the Borrower and which are not a result of any Borrower default under the Net Lease.

(b) Borrower shall enforce all of the terms, covenants and conditions contained in the Net Lease and any Lease Guaranty upon the part of the tenant under the Net Lease or any Lease Guarantor, as the case may be thereunder to be observed or performed, short of termination thereof, provided, that, notwithstanding anything contained herein to the contrary, Borrower shall obtain the express written consent of Lender, not to be unreasonably withheld or unduly delayed, prior to pursuing

any remedies which could affect any payment due from the Net Lease Tenant, or which could otherwise adversely affect (A) the rights or claims of Borrower or Lender under the Net Lease, (B) the value of the Property or (C) the rights or interests of Lender under the Loan Documents. In no event shall Borrower declare an Event of Default under the Net Lease prior to the receipt of written consent, which consent will not be unreasonably withheld or delayed, from Lender.

(c) Borrower shall promptly deliver to Lender a copy of any notice relating to defaults received from or given to the tenant under the Net Lease or any other person or entity liable for the performance of the tenant's obligations under the Net Lease. Borrower agrees to promptly notify Lender of any request for consent or approval made of Borrower by the tenant under the Net Lease or any other person or entity liable for the performance of the obligations of the tenant under the Net Lease. Prior to the granting or withholding of any such consent or approval, Borrower shall obtain the express written consent of Lender, not to be unreasonably withheld or unduly delayed. Furthermore, any purported granting or withholding of any such consent or approval by Borrower without the prior written consent of Lender shall be void and of no effect. Nothing contained herein shall affect or impair any separate right Lender may have under the Net Lease or otherwise to approve or consent to any item or thing.

(d) If Borrower shall, in any manner, (i) fail to enforce all of the terms, covenants and conditions contained in the Net Lease and any Lease Guaranty upon the part of the tenant under the Net Lease or any Lease Guarantor, as the case may be, to be observed or performed, or (ii) fail to keep, observe or perform its obligations under and in accordance Section 3.6(a)-(c) above, Lender may cause a receiver to be appointed to take any action that Lender deems necessary or desirable to perform or cause to be kept, observed or performed any such terms, covenants, provisions or agreements (including, but not limited to, enter upon the Property and take all action thereon as Lender may deem necessary for such purposes). The Borrower agrees to cooperate with any receiver appointed and will not seek to enjoin any such receiver. Lender may expend such sums of money as are reasonable and necessary for any such purposes, and Borrower hereby covenants and agrees to pay to Lender, immediately upon demand, all sums so expended by Lender, together with interest thereon from the date of such payment at the Default Rate (as defined in the Note), and until so paid by Borrower, all sums so expended by Lender and the interest thereon shall be added to the Debt secured by the lien and legal operation and effect of this Security Instrument.

(e) Borrower shall not enter into any Lease for all or any portion of the Property, other than the Net Lease, without Lender's prior written consent. The provisions of that certain Assignment of Leases and Rents of even date herewith made by Borrower, assignor, to Lender, as assignee and this Section 3.6 shall apply to any such Lease as if such Lease were the Net Lease designated hereunder.

Section 3.7 MAINTENANCE OF PROPERTY. Borrower shall or shall cause the Net Lease Tenant pursuant to the Net Lease to maintain the Property in a good and safe condition and repair. Except to the extent the tenant under the Net Lease has a right to do so without Borrower's consent, the Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property and tenant improvements made in connection with a Lease which has been entered into by Borrower in accordance with the terms hereof) without the consent of Lender. Subject to the provisions of Subsection 3.2(g) and Section 3.5, and subject to the terms of the Net Lease, Borrower shall, or shall cause the tenant under the Net Lease to, promptly repair,

replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.5 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.8 WASTE. Borrower shall not commit or suffer any waste of the Property or, subject to the terms of the Net Lease, make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument.

Section 3.9 COMPLIANCE WITH LAWS. Borrower shall, and subject to the terms of the Net Lease, shall cause the tenant under the Net Lease to, (i) promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof including, but not limited to, the Americans with Disabilities Act ("ADA") (collectively, the "Applicable Laws"), (ii) from time to time, upon Lender's request, provide Lender with evidence satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws, (iii) give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws, and (iv) take appropriate measures to prevent and will not engage in or knowingly permit any illegal activities at the Property.

Section 3.10 BOOKS AND RECORDS.

(a) Borrower shall keep adequate books and records of account in accordance with GAAP and furnish to Lender upon Lender's request:

(i) to the extent provided to Borrower pursuant to the Net Lease, quarterly operating statements of the Property, prepared and certified by the tenant under the Net Lease, detailing the revenues received, the expenses incurred and major capital improvements for that quarter and containing appropriate year to date information, within thirty (30) days after the end of each fiscal quarter and each fiscal year, respectively;

(ii) an annual balance sheet and profit and loss statement of Borrower in the form prepared and certified by the Borrower, within ninety (90) days after the close of each fiscal year of Borrower, and, if available in the Borrower's normal course of business, any financial statement prepared by an independent certified public accountant with respect to Borrower within thirty (30) days of the date the same are made available to Borrower;



(iii) copies of Borrower's federal income tax returns within fifteen (15) days of the date such returns are filed; and

(iv) all other financial information provided to Borrower with respect to the Property, the tenant under Net Lease or any person or entity liable for the performance of the tenant's obligations under the Net Lease, within fifteen (15) days of Borrower's receipt thereof.

(b) From the date hereof through that date which is ninety (90) months from the date hereof, Borrower shall cause each Guarantor (as hereinafter defined) and each Indemnitor other than Borrower (an "Indemnitor") under the Environmental Indemnity (as hereinafter defined) to furnish to Lender (i) no later than ninety (90) days after the end of the fiscal year for the applicable Guarantor or Indemnitor, balance sheet, profit and loss statement and statement of cash flows for said fiscal year certified to Lender and prepared and certified by a nationally recognized independent certified public accounting firm and (ii) on a quarterly basis with in forty-five (45) days of the end of such quarter a certificate of an officer of Guarantor certifying that Guarantor is in compliance with the Guarantor's Required Net Worth.

(c) Borrower, Guarantor and Indemnitor shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender in form and substance reasonably satisfactory to Lender.

Section 3.11 PAYMENT FOR LABOR AND MATERIALS. Except to the extent the tenant under Net Lease is obligated to pay the same, Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (defined below).

Section 3.12 MANAGEMENT. If Borrower has entered into any management agreement in respect of the Property, then in the case of an Event of Default hereunder or a default under any such management agreement, which default is not cured within any applicable grace or cure period, Lender shall have the right to terminate, or to direct Borrower to terminate, such management agreement upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Lender.

Section 3.13 PERFORMANCE OF OTHER AGREEMENTS. Except to the extent the tenant under Net Lease is obligated to perform the same, Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

Section 3.14 CHANGE OF NAME, IDENTITY OR STRUCTURE. Borrower will not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, limited liability company, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. Borrower will execute and deliver to Lender, prior to or contemporaneously with the effective date of

any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.15 EXISTENCE. Borrower will continuously maintain its existence and its rights to do business in the state where the Property is located together with its franchises and trade names.

Section 3.16 TRUSTEE FEES. Borrower will pay or cause to be paid, as the sum becomes due and payable, any trustee fees, disbursements and other amounts payable to any trustee of Lender.

#### ARTICLE IV - SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1 SINGLE PURPOSE ENTITY. It has not and shall not: (a) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's partnership agreement, articles or certificate of incorporation, articles of organization, operating agreement, or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Borrower to perform its obligations hereunder, under the Note or under the other Loan Documents; (e) own any subsidiary or make any investment in, any person or entity without the consent of Lender; (f) commingle its assets with the assets of any of its general partners, managing members, shareholders, affiliates, principals or of any other person or entity; (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except with respect to trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt is paid when due; (h) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, managing members, shareholders, principals and affiliates of Borrower, the affiliates of a general partner or managing member of Borrower, and any other person or entity; (i) enter into any contract or agreement with any general partner, managing member, shareholder, principal or affiliate of Borrower, Guarantor or Indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any general partner, managing member, shareholder, principal or affiliate of Borrower, Guarantor or Indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof; (j) seek the dissolution or winding up in whole, or in part, of Borrower; (k) maintain its assets in such a manner that it will be costly or difficult

to segregate, ascertain or identify its individual assets from those of any general partner, managing member, shareholder, principal or affiliate of Borrower, or any general partner, managing member, shareholder, principal or affiliate thereof or any other person; (l) hold itself out to be responsible for the debts of another person; (m) make any loans to any third party; (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or affiliate of Borrower, or any general partner, managing member, shareholder, principal or affiliate thereof); (o) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or (p) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

The covenants set forth in (a) through (p) above shall apply to the managing member of Borrower (the "Controlling Party") provided that all references to "Property" set forth above shall, with respect to the Controlling Party, be deemed to refer to its managing membership interest in Borrower. The Controlling Party will at times have at least one (1) director which is independent" in accordance with the provisions of Section 4.3 of the Controlling Party's certificate of incorporation of the date hereof. Without limitation to the foregoing provisions of this Section 4.1, Borrower and the Controlling Party will not amend and will not permit any other person or entity to amend the provisions of Article 4 of Borrower's articles of organization and Article III of Borrower's operating agreement.

Notwithstanding the foregoing, in the event this Deed of Trust is transferred by Borrower to the Net Lease Tenant pursuant to Section 8.3, the provisions of this Section 4.1 shall not be applicable.

Section 4.2 RESTORATION. The following provisions shall apply in connection with the Restoration of the Property:

(a) All Insurance Proceeds (hereinafter defined) and Condemnation Proceeds (hereinafter defined) shall be paid directly to the Net Lease Tenant for the purposes of the Restoration of the Property in accordance with Article XX of the Net Lease. To the extent any such Condemnation Proceeds or Insurance Proceeds are in excess of Restoration costs the Net Lease Tenant shall, as provided in the Net Lease, retain the same. As used herein, (i) the term "Insurance Proceeds" means the amount of insurance proceeds payable in connection with the damage or destruction of the Property (including, but not limited to, the insurance required by Subsections 3.2(a)(i), (iv), (vi), (viii) and (ix), but not the insurance required pursuant to Subsection 3.2(a)(vii), the proceeds of which shall belong to Lender), and (ii) the term "Condemnation Proceeds" means the amount of all awards payable in connection with a taking referred in Section 3.5.

(b) All Condemnation Proceeds and Insurance Proceeds not required (i) for the Restoration may be retained by the Net Lease Tenant, as provided in the Net Lease. Provided no Event of Default exists under the Note, this Security Instrument or the other Loan Documents, in the event of any prepayment of the Debt pursuant to the terms of the Net Lease due to a casualty or condemnation, no Prepayment Consideration (as defined in the Note) shall be due in connection therewith, but Borrower shall be responsible for all other amounts due under the Note, this Security Instrument and the

other Loan Documents. If Lender shall receive and retain Condemnation Proceeds and Insurance Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

## ARTICLE V - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 WARRANTY OF TITLE. Borrower has paid for and has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.2 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3 LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the other Loan Documents.

Section 5.4 VALIDITY OF DOCUMENTS. (a) The execution, delivery and performance of the Note, this Security Instrument and the other Loan Documents and the borrowing evidenced by the Note (i) are within the corporate, partnership, trust or limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate, partnership, trust or limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership, trust, operating agreement or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and

(b) the Note, this Security Instrument and the other Loan Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.5 LITIGATION. There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against, or affecting, Borrower, a Guarantor, if any, an Indemnitor, if any, or the Property that has not been disclosed to Lender or is not adequately covered by insurance, as determined by Lender in its sole and absolute discretion.

Section 5.6 STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.2 hereof; (b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification; (c) the Property and the present and contemplated use and occupancy thereof are in full compliance with all Applicable Laws, including, without limitation, zoning ordinances, building codes, land use and environmental laws, laws relating to the disabled (including, but not limited to, the ADA) and other similar laws; (d) the Property is served by all utilities (including, but not limited to, public water and sewer systems) required for the current or contemplated use thereof; (e) all utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service; (f) all public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public; (g) the Property is, to the best of Borrower's knowledge, free from damage caused by fire or other casualty; (h) all costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full; (i) all liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws; and (j) all Improvements lie within the boundary of the Land.

Section 5.7 NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

Section 5.8 SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements are assessed and taxed together with the Property or any portion thereof.

Section 5.9 ERISA COMPLIANCE. As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA; (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; (iii) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA; and

(iv) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans. Borrower shall deliver to Lender such certifications or other evidence as requested by Lender from time to time of Borrower's compliance with the foregoing representations and covenants.

Section 5.10 LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Net Lease; (b) the Net Lease is valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Net Lease are reflected in the definition of Net Lease contained herein; (d) none of the Rents reserved in the Net Lease have been assigned or otherwise pledged or hypothecated; (e) none of the Rents have been collected for more than one (1) month in advance; (f) the premises demised under the Net Lease have been completed and the tenant under the Net Lease has accepted the same and has taken possession of the same on a rent-paying basis; (g) there exist no offsets or defenses to the payment of any portion of the Rents; (h) no person or entity has any possessory interest in, or right to occupy, the Property, except under and pursuant to the Net Lease; (i) no default exists, or with the passing of time or the giving of notice or both would exist under the Net Lease which could have a material adverse effect on the Borrower or the Property.

Section 5.11 FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) it has received reasonably equivalent value for the granting of this Security Instrument.

Section 5.12 BUSINESS PURPOSES. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13 TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14 MAILING ADDRESS. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15 NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted in connection with Borrower's application for the loan and Lender's issuance of a commitment for the Loan (collectively, the "Loan Application") and the satisfaction of the conditions thereof, including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents, are accurate, complete and correct in all respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16 DISCLOSURE. Borrower has disclosed to Lender all material facts with respect to representations and warranties made herein, including without limitation that certain letter dated June 14, 1999 to Lender from John McKenzie and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17 THIRD PARTY REPRESENTATIONS. Each of the representations and the warranties made by each Guarantor and Indemnitor herein or in any Other Loan Document(s) is true and correct in all material respects.

Section 5.18 ILLEGAL ACTIVITY. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

Section 5.19 USE OF PROCEEDS; MARGIN REGULATIONS. The Borrower will apply the proceeds of the Loan for general corporate purposes. No part of the proceeds from the Loan will be used, by Borrower, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation U.

Borrower acknowledges that in accepting the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth above notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in making the Loan and that Lender would not make the Loan in the absence of such warranties.

## ARTICLE VI - OBLIGATIONS AND RELIANCES

Section 6.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender are solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower and no term or condition of any of the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor. Borrower is not relying on Lender's expertise business acumen or advice in connection with the Property.

### Section 6.2 NO LENDER OBLIGATIONS.

(a) Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the other Loan Documents, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

## ARTICLE VII - FURTHER ASSURANCES

Section 7.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Except where prohibited by law, Borrower will pay all taxes, duties, imposts, assessments, filing, registration and recording fees, and any and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Loan Documents and any amendment or supplement thereto.

Section 7.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender on the terms set forth herein the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Provided there has been no default or uncured Event of Default or any event which but for the passage of time or the giving of notice would constitute an Event of Default, Borrower's obligation to agree to any modification of a Loan Document shall be limited to modifications that are ministerial, corrective or otherwise non material in nature and that would have no adverse economic effect on Borrower (including any adverse tax impact on Borrower or its members) or that would waiver or impair any substantive rights or protections under the Loan Documents.

Section 7.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.



(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 7.4 ESTOPPEL CERTIFICATES.

(a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee an estoppel certificate in form and content as may be requested by Lender with respect to the status of the Loan and/or the Loan Documents.

(b) Borrower shall deliver to Lender, promptly upon request and subject to Section 27.8 of the Net Lease, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may reasonably require.

Section 7.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Lender agrees to fully indemnify and hold Borrower harmless for any and all losses actually incurred in connection with any lost, stolen, destroyed or mutilated Note which is replaced pursuant to this Section 7.5.

**ARTICLE VIII - DUE ON SALE/ENCUMBRANCE**

Section 8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, managing members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for payment and performance of the Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment or the performance of the Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2 NO SALE/ENCUMBRANCE. Borrower agrees that Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred.

Notwithstanding the foregoing, Lender shall not withhold its consent to the transfers of the Property or the interests in Borrower among the members of the Borrower and/or their respective affiliates provided that:

(A) at the time of such proposed Transfer, no Event of Default shall have occurred and be continuing or any event shall have occurred which but for the passage of time would constitute an Event of Default, under this Security Instrument or any of the other Loan Documents, (B) such Transfer does

not violate the provisions of applicable law, (C) Borrower shall have delivered to Lender and S&P a non-consolidation opinion in form and substance, and from a law firm, satisfactory to Lender and S&P, (D) if required by Lender, Lender shall have received written confirmation from S&P that the Transfer will not result in the downgrading, qualification or withdrawal of the then current rating of the Note, (E) the managing member of the Borrower, after giving effect to such Transfer shall remain a Single Purpose Entity and (F) the Borrower remains in compliance with Section 4.1, and the representations set forth in Article V hereof.

Section 8.3 SALE/ENCUMBRANCE DEFINED. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer (each a "Transfer") within the meaning of this Article 8 shall be deemed to include, but not be limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if Borrower, any Guarantor, any Indemnitor, or any general partner or managing member of Borrower, Guarantor or Indemnitor is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (d) if Borrower, any Guarantor or Indemnitor or any general partner or managing member of Borrower, any Guarantor or Indemnitor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner, or the transfer or pledge of the partnership interest of any general partner or managing partner of such partnership or any profits or proceeds relating to such partnership interest or the transfer or pledge of more than 49% in the aggregate of any limited partnership interests in such partnership or any profits or proceeds related to such interests whether in one transfer or pledge or a series of transfers or pledges; (e) if Borrower, any Guarantor or Indemnitor or any general partner or managing member of Borrower, any Guarantor or Indemnitor is a limited liability company, the change, removal or resignation of the managing member of such company, or the transfer or pledge of the membership interest of the managing member of such company or any profits or proceeds relating to such membership interest or the transfer or pledge of more than 49% in the aggregate of any membership interests in such company or any profits or proceeds related to such interests whether in one transfer or pledge or a series of transfers or pledges; and (f) without limitation to the foregoing, any voluntary or involuntary sale, transfer, conveyance or pledge by any person or entity which directly or indirectly controls Borrower (by operation of law or otherwise) (a "Principal") of its direct or indirect controlling interest in Borrower. Notwithstanding the foregoing, the following transfers shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer within the meaning of this Article 8: (A) transfer by devise or descent or by operation of law upon the death of a partner, member or stockholder of Borrower or any general partner or member thereof, (B) a sale, transfer or hypothecation of a partnership, shareholder or membership interest in Borrower or any member, whichever the case may be, by the current partner(s), shareholder(s) or member(s), as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such partner, shareholder or member or to a Principal (or a trust for the benefit of any such persons), (C) a sale or transfer of the Property from Borrower to the Net Lease Tenant pursuant to Article XVIII of the Net Lease and (D) a sale or transfer of the membership interests in Borrower held by Omaha Real Estate Investment Partnership to a charitable organization or charitable foundation. In the event that the Property is transferred from the Borrower to the Net Lease

Tenant in accordance with (C) above, the Loan shall be fully recourse to the Net Lease Tenant as set forth in Section 13.1 until payment in full of the Debt.

Section 8.4 LENDER'S RIGHTS. Lender reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, payment of a transfer fee of not less than (i)(A) \$50,000.00 for the first transfer and (B) one percent (1%) of the principal balance of the Note for any transfer thereafter and (ii) all of Lender's expenses incurred in connection with any transfer including without limitation attorney's fees, the approval by Lender of the proposed transferee, the proposed transferee's continued compliance with the representations, warranties and covenants set forth in Section 5.9 hereof, or such other conditions as Lender shall determine in its sole discretion to be in the interest of Lender. The above referenced transfer fee shall not apply to any transfer from Borrower to the Net Lease Tenant. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Lender's consent. This provision shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

#### ARTICLE IX- DEFAULT

Section 9.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default": (a) if any portion of the Debt is not paid prior to the fifth (5th) day after the same is due or if the entire Debt is not paid on or before the Maturity Date; (b) if any of the Taxes or Other Charges is not paid prior to the date thirty (30) days after the same becomes delinquent except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument; (c) if for more than thirty (30) days the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender upon request or Borrower has not delivered evidence of the renewal of the Policies thirty (30) days prior to their expiration as provided in Section 3.2(b); (d) if Borrower violates, or does not comply with any of the provisions of Sections 3.6 or 4.1 or Articles 8 or 11; (e) if any representation or warranty of Borrower, Indemnitor or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (a "Guarantor"), or any general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined below) or any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender as of the date hereof shall have been false or misleading in any material respect when made; (f) if after five (5) days any representation or warranty of Borrower, Indemnitor or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (a "Guarantor"), or any general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined below) or any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender after the date hereof shall have been false or misleading in any material respect when made; (g) if (i) Borrower, any general partner or managing member of Borrower or the Net Lease Tenant shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency or

relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, liquidation, dissolution or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or Borrower, any general partner or managing member of Borrower or the Net Lease Tenant shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, any general partner or managing member of Borrower or the Net Lease Tenant any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of sixty (60) days; or (iii) there shall be commenced against Borrower or any general partner or managing member of Borrower or the Net Lease Tenant any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Borrower, any general partner or managing member of Borrower or the Net Lease Tenant shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower, any general partner or managing member of Borrower or the Net Lease Tenant shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (h) if Borrower shall be in default beyond any applicable notice or cure period under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument; (i) if any federal tax lien is filed against the Property and same is not discharged of record within thirty (30) days after Borrower has first received notice thereof; (j) if within ten (10) days of Lender's demand therefor Borrower fails to provide Lender with the written certification and evidence referred to in Section 5.9 hereof; (k) if Borrower or any other Indemnitor shall fail to perform any of its obligations under that certain environmental indemnity agreement of even date herewith (the "Environmental Indemnity") after the expiration of applicable notice and grace periods, if any; (l) if any default beyond any applicable notice or cure period occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any; (m) if for more than ten (10) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the other Loan Documents in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days; (n) if a default by either the Borrower or the tenant under the Net Lease or any other Loan Documents occurs beyond any applicable grace or cure period therein provided; or (n) the Net Lease is terminated except for those termination rights granted pursuant to Section 2.2 of the Net Lease.

Notwithstanding the foregoing, at any time and during such period that the Net Lease Tenant fails to maintain a credit rating of at least BBB by S&P and Baa2 by Moody's, the thirty (30) day grace periods set forth in subsections (b) and (c) above shall not be applicable.

In the event that Lender or Borrower receives notice or otherwise becomes aware of any Event of Default pursuant to this Section 9.1, Lender or Borrower will promptly notify the other party of the same provided the other party has not already given notice of the same.

## ARTICLE X - RIGHTS AND REMEDIES

Section 10.1 REMEDIES. To the extent permitted by applicable law, upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) with or without entry, institute proceedings, judicial or otherwise, for the complete or partial foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, any partial foreclosure to be subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (c) cause the Property or any part thereof and all estate, claim, demand, right, title and interest of borrower therein and to be sold under the Trustee's power of sale, in accordance with applicable law, at one or more sales, as an entirety or in one or more parcels; (d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; (e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents; (f) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any person, firm or other entity liable for the payment of the Debt; (g) enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may exercise all rights and powers of Borrower with respect to the Property including, without limitation; (1) the right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat including without limitation the right to perform the landlord's obligations under the Net Lease with or without entry; (2) the right to make or complete any construction, alterations, additions, renewals, replacements and improvements to or on the Property as Lender deems advisable; (3) the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand. sue for, collect and receive all Rents of the Property and every part thereof; (h) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (i) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; (j) apply the receipts from the Property, any Deposits and interest thereon and/or any unearned Insurance Premiums paid to Lender upon the surrender of any Policies maintained pursuant to Article 3 hereof (it being agreed that Lender shall have the right to surrender such Policies upon the occurrence of an Event of Default), to the payment of the Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole

discretion; (k) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (1) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (2) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower.

If Lender elects to have the Property sold under the Trustee's power of sale, then the Trustee shall execute a written Notice of Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Borrower except as is required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Neither Borrower nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Borrower or Lender may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 10.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 9.1(f) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 10.2 APPLICATION OF PROCEEDS. To the extent permitted by applicable law, the purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 10.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may after notice to Borrower, but without any obligation to do so and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as

Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, or to enforce the conditions of the Net Lease and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 10.4 ACTIONS AND PROCEEDINGS. Subject to the terms of the Net Lease, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 10.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 10.6 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and its affiliates or of any Guarantor or Indemnitor which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and its affiliates or of any Guarantor or Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located. This Section 10.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 10.7 OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of

payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 10.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 10.9 VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 10.10 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument, including but not limited to Article 13 hereof Lender and other Indemnified Parties (defined in Section 11.1 below) are entitled to enforce the obligations of Borrower, Guarantor and Indemnitor contained in Sections 11.2 and 11.3 without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through trustee's sale foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action or a trustee's sale against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower, Guarantor and Indemnitor. The provisions of Sections 11.2 and 11.3 are exceptions to any non-recourse or exculpation provisions in the Note, this Security Instrument or the other Loan Documents, and Borrower, Guarantor and Indemnitor are fully and personally liable for the obligations pursuant to Sections 11.2 and 11.3. The liability of Borrower, Guarantor and Indemnitor are not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Note,



this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower, whether or not action is brought against any other person or entity or whether or not any other person or entity is joined in the action or actions.

Section 10.11 RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 10.12 DEFAULT INTEREST AND LATE CHARGES. Borrower acknowledges that, without limitation to any of Lender's rights or remedies set forth in this Security Instrument, Lender has the right following an Event of Default to demand interest on the principal amount of the Note at the Default Rate and late payment charges in accordance with the terms of the Note.

## ARTICLE XI - INDEMNIFICATION

Section 11.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following, except to the extent the following relate solely to an Indemnified Party's gross negligence or willful misconduct: (a) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any Guarantor or Indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (d) any failure of the Property to be in compliance with any Applicable Laws; (e) the enforcement by any Indemnified Party of the provisions of this Article 11; (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan; or (g) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 11.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Article 11, the term "Indemnified Parties" means Lender or Trustee and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, including,

but not limited to, custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan and any persons or entities who are presently a holder or have been a holder of the Note.

Section 11.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents.

Section 11.3 ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan; and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 5.9.

Section 11.4 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. In the event of any such claim which is covered by an insurance policy (provided the contents of which are known to the Indemnified Party), the Indemnified Party will respond to such claim so as to preserve the insurance coverage. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys in cooperation with such insurer shall control the resolution of claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE XII - WAIVERS

Section 12.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Obligations.

Section 12.2 MARSHALING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 12.3 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 12.4 SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 12.5 SURVIVAL. The indemnifications made pursuant to Section 11.3 shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

**Section 12.6 WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

### **ARTICLE XIII - EXCULPATION**

Section 13.1 EXCULPATION. Except as otherwise provided herein, in the Note or in the other Loan Documents, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note or this Security Instrument by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon the Note, this Security Instrument, the other Loan Documents, and the interest in the Property, the Rents and any other collateral given to Lender created by the Note, this Security Instrument and the other Loan Documents; provided, however, that any judgment in any such

action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender. Lender, by accepting the Note and this Security Instrument, agrees that it shall not, except as otherwise provided in Section 10.10, sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding, under or by reason of or under or in connection with the Note, the other Loan Documents or this Security Instrument.

Notwithstanding the foregoing, in the event that the Borrower transfers the Property to the Net Lease Tenant pursuant to Section 8.3(c) hereof the Loan shall be fully recourse to the Net Lease Tenant and Lender may enforce the liability and obligation of the Net Lease Tenant to perform and observe the obligations contained in the Note or this Security Instrument by any action or proceeding including without limitation seeking a money judgment against the Net Lease Tenant.

Section 13.2 RESERVATION OF CERTAIN RIGHTS. The provisions of Section 13.1 shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by the Note, the other Loan Documents or this Security Instrument; (c) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Security Instrument; (d) affect the validity or enforceability of any indemnity, guaranty, master lease or similar instrument made in connection with the Note, this Security Instrument, or the other Loan Documents; (e) impair the right of Lender to obtain the appointment of a receiver; (f) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; (g) impair the right of Lender to obtain a deficiency judgment or judgment on the Note against Borrower if necessary to obtain any insurance proceeds or condemnation awards to which Lender would otherwise be entitled under this Security Instrument, provided, however, Lender shall only enforce such judgment against the insurance proceeds and/or condemnation awards; or (h) impair the right of Lender to enforce the provisions of Sections 10. 10, 11.2 and 11.3 of this Security Instrument.

Section 13.3 EXCEPTIONS TO EXCULPATION. Notwithstanding the provisions of this Article to the contrary, Borrower shall be personally liable to Lender for the Losses it incurs due to: (i) fraud or intentional misrepresentation by Borrower, its agents or principals in connection with the execution and the delivery of the Note, this Security Instrument or the other Loan Documents; (ii) Borrower's misapplication or misappropriation of (A) Rents received by Borrower after the occurrence of an Event of Default, (B) tenant security deposits or Rents collected in advance, or (C) insurance proceeds or condemnation awards; (iii) Borrower's failure to pay Taxes, Insurance Premiums, Other Charges (except to the extent that sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms of this Security Instrument), charges for labor or materials or other charges that can create liens on the Property, provided that Borrower's liability under this clause (iii) shall not exceed an amount equal to the net operating income of the Property for the twelve (12) month period preceding the related failure to pay, less the amount of all Constant Monthly Payments (as defined in the Note) and required reserve payments made by Borrower in accordance with this Note, the Security Instrument and the other Loan Documents during such twelve (12) month period; (iv) Borrower's failure to comply with the provisions of Sections 3.6, 3. 10, or 5.9 of this Security Instrument; or (v) Borrower's or any other Indemnitor's failure to comply with the provisions of the Environmental Indemnity.

Section 13.4 RECOURSE. Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability as set forth in Section 13.1 above SHALL BECOME NULL AND VOID

and shall be of no further force and effect in the event of Borrower's default under Section 8.2 of this Security Instrument or if the Property or any part thereof shall become an asset in (i) a voluntary bankruptcy or insolvency proceeding, or (ii) an involuntary bankruptcy or insolvency proceeding (A) which is commenced by any party controlling, controlled by or under common control with Borrower (the "Borrowing Group") or (B) in which any member of the Borrowing Group objects to a motion by Lender for relief from any stay or injunction from the foreclosure of this Security Instrument or any other remedial action permitted hereunder or under the Note or the other Loan Documents.

Section 13.5 BANKRUPTCY CLAIMS. Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 111 I(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Note, this Security Instrument and the other Loan Documents.

#### ARTICLE XIV - NOTICES

Section 14.1 NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:                      Omaha Real Estate Investment  
Partnership II, L.L.C.  
c/o Phatte, Inc.  
10350 Bren Road West  
Minnetonka, Minnesota 55343  
Attention:     Keith Bednarowski  
Facsimile No. (612) 656-4750

With a copy to:                      Opus Estates Corporation  
10350 Bren Road West  
Minnetonka, Minnesota 55343  
Attention:     General Counsel  
Facsimile No. (612) 656-4529

If to Lender:                              Cornerstone Capital Corporation  
6631 Commerce Parkway, Suite P  
Dublin, Ohio 43017  
Attention:     Peter Paras  
Facsimile No. (614) 761-7609

With a copy to: Cadwalader, Wickersham & Taft  
Suite 2400  
227 West Trade Street  
Charlotte, North Carolina 28202  
Attention: James P. Carroll  
Facsimile No. (704) 348-5200

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Borrower for itself and for each party hereto, hereby requests a copy of any notice of default and a copy of any notice of sale hereunder be mailed to them at the applicable addresses provided above.

#### **ARTICLE XV - APPLICABLE LAW**

Section 15.1 CHOICE OF LAW. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and the applicable laws of the United States of America.

Section 15.2 USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 15.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## ARTICLE XVI - SECONDARY MARKET

Section 16.1 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the other Loan Documents, and any or all servicing rights or trustee obligation with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each trustee, purchaser, transferee, assignee, servicer, participant, investor in such Securities or any rating agency (a "Rating Agency") rating such Securities (all of the foregoing entities collectively referred to as the "Investor") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Guarantor, any Indemnitor and the Property, whether furnished by Borrower, any Guarantor, any Indemnitor or otherwise, as Lender determines necessary or desirable. Borrower, any Guarantor and any Indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section, provided such cooperation does not require Borrower to incur any material cost, expense or liability. Borrower shall also furnish and Borrower, any Guarantor and any Indemnitor consent to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all available information concerning the Property, the Leases, the financial condition of Borrower, any Guarantor and any Indemnitor as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest.

## ARTICLE XVII - COSTS

Section 17.1 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall be entitled to impose certain administrative processing and/or commitment fees in connection with: (a) extensions, renewals, modifications, amendments and terminations of the Loan Documents requested by Borrower, (b) the release or substitution of collateral for the Loan requested by Borrower, and that Lender shall be entitled to reimbursement for its reasonable out-of-pocket costs and expenses, including without limitation reappraisals, environmental reports or updates and structural reports, associated with its provision of consents, waivers and approvals under the Loan Documents. Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, which are required by law, regulation or any governmental or quasi-governmental authority and costs of any required environmental or structural reports. Borrower hereby acknowledges and agrees to pay, immediately, upon demand, all such fees, costs and expenses.

Section 17.2 ATTORNEY'S FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the preparation of the Note, this Security Instrument and the other Loan Documents, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder and after a default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

## ARTICLE XVIII - DEFINITIONS

Section 18.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender, its corporate trustee, servicer and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 18.2 SPECIFIC DEFINITIONS. Unless the context otherwise specifies or requires the following terms have the meanings specified below:

"GIC" means a Guaranteed Investment Contract purchased from any bank, bank holding company, savings institution, insurance company or trust company existing under the laws of the United States or any state thereof or of the District of Columbia which has an investment rating that is Investment Grade.

"Investment Grade" means long term unsecured debt rating not lower than AA by S&P.

"Institutional Investor" means any of the following persons existing under the laws of the United States or any state thereof or of the District of Columbia or of Canada or any province thereof: (i) any bank, bank holding company, savings institution or trust company, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation or other eleemosynary institution, (iii) any insurance company or fraternal benefit society, (iv) any pension, retirement or profit sharing fund or trust for which any bank, trust company or national banking association or investment advisor registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, or if self managed, having funds of at least \$50,000,000, (v) any investment company, as defined in the Investment Company Act of 1940, as amended, (vi) any college or university, (vii) any government, any public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds, (viii) a "real estate investment trust", as defined in Section 856 of the Internal Revenue Code of 1986, as amended, (ix) any finance company, (x) or any financial services corporation.

"Lender" has the meaning set forth in the preamble hereto.

"Letter of Credit" means an irrevocable, unconditional, standby letter of credit issued in an amount equal to the Letter of Credit Amount for an initial term of one year in favor of Lender and entitling Lender to draw thereon in the State of New York, issued by the Letter of Credit Provider provided the investment rating of such Letter of Credit Provider is not less than the Required Rating applicable thereto.

"Letter of Credit Amount" means \$18,706,616.00.



"Letter of Credit Provider" means The Chase Manhattan Bank, or any other domestic bank or U.S. agency or branch of a foreign bank acceptable to Lender.

"LOC" means an irrevocable, unconditional letter of credit provided by any domestic bank or U.S. agency or branch of a foreign bank acceptable to Lender, provided, however, that the investment rating of such provider is not less than the Required Rating.

"Moody's" means Moody's Investors Services, Inc.

"Permitted Investments" means any one or more of the following:

(i) direct obligations of, or obligations guaranteed as to timely payment of principal and interest by, the United States of America ("USA") or any agency or instrumentality thereof provided that such obligations are backed by the full faith and credit of the USA;

(ii) repurchase obligations with respect to any security described in clause (i) above entered into with a depository institution or trust company (acting as principal) whose long-term unsecured debt obligations have received one of the two highest ratings available for such securities by at least two of Standard & Poor's Ratings Service; Fitch Investors Service, Inc.; Moody's Investors Service, Inc. and Duff & Phelps Credit Rating Co. (the "Rating Agencies"); and

(iii) units of taxable money market funds which funds are regulated investment companies, seek to maintain a constant net asset value of \$1 per share and invest solely in obligations backed by the full faith and credit of the USA, and have been designated in writing by at least two of the Rating Agencies in one of the two highest credit rating categories as Permitted Investments with respect to this definition;

provided in each case that no such investment shall be purchased at a premium to its face value (disregarding interest accrued to the date of acquisition) and that no such investment shall have a maturity later than one year from the date of acquisition.

"Person" means an individual, partnership, corporation, limited liability company, trust, estate, unincorporated association, syndicate, joint venture or organization, or a government or any department or agency thereof.

"Required Rating" means long term unsecured debt rating not lower than Investment Grade.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized rating agency designated by the Borrower (with notice to Lender).

"Trustee" has the meaning set forth in the preamble hereto.

## ARTICLE XIX - LETTER OF CREDIT.

### Section 19.1 ADMINISTRATION OF LETTER OF CREDIT AND PURCHASE OF GIC.

(a) In the event that the Borrower elects to exercise the Termination Prepayment Right pursuant to Section 5 of the Note, either (i) within twenty-one (21) days of such election the Borrower shall deliver to Lender cash in the amount of the Letter of Credit Amount whereupon Lender shall return the Letter of Credit to the Borrower within one hundred (100) days of such payment provided Borrower has not commenced any bankruptcy proceeding; or (ii) at the expiration of the aforesaid twenty-one (21) day period, the Lender shall draw down on the Letter of Credit.

(b) The cash delivered to Lender in the event of (i) above, or the proceeds of the Letter of Credit in the event of (ii) above together with the termination fee, shall be used to purchase a GIC which will mature as close as reasonably possible to, but not later than the Termination Date (as defined in the Note) and will at the Termination Date produce \$30,020,382.00 in proceeds payable to Lender to retire the Debt. Within the twenty-one (21) day period after Borrower's election, if any, to exercise the Termination Prepayment Right, Borrower shall have the option of recommending Lender to purchase a certain GIC provided that such GIC meets the definition contained in Article XVIII and the requirements of the preceding sentence of this Section 19.1(b).

(c) Upon the maturity of the GIC, the Lender will apply the proceeds therefrom to the outstanding balance of the Loan in accordance with Section 5 of the Note.

(d) The monies remaining, if any, from the cash delivered pursuant to Section 19.1(a)(i) above or the proceeds of the Letter of Credit pursuant to Section 19.1(a)(ii) above, after the Lender purchases the GIC shall within three (3) Business Days after purchase of the GIC be delivered and paid over by Lender to the Borrower.

## ARTICLE XX - MISCELLANEOUS PROVISIONS

Section 20.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 20.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and its respective successors and assigns forever.

Section 20.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 20.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 20.5 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 20.6 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 20.7 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the payment and performance of the Obligations.

Section 20.8 ENTIRE AGREEMENT. The Note, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the other Loan Documents.

## **ARTICLE XXI - APPLICATION OF MONEYS**

### **Section 21.1 Moneys Under the Lease.**

(a) Unless and until a default shall have occurred and be continuing, moneys received by the Lender as rent under the Net Lease pursuant to the Assignment and any late charge on any overdue installment thereof shall be applied as follows:

- (i) to the payment of any unpaid trustee fees pursuant to Section 3.16;
- (ii) to the Constant Monthly Payments required to be made on the Note (and interest on any overdue amount thereof) on the first (1<sup>st</sup>) day of each month, and if insufficient to pay such amount in full, pro rata to each Lender, if more than one, in proportion to the amount of the Constant Monthly Payment required to be made on the Note held by such Lender, and then to any other sums then due and owing hereunder; and

(iii) the excess, if any, of any such rent or other payment after the application thereof pursuant to clause (i) above shall be paid to Borrower, or upon its written order.


(b) If a default shall have occurred and be continuing, the amounts referred to in Section 21.1(a)(iii) shall be held by the Lender, and may, at the option of the Lender, be applied to the prepayment of the Note at a price equal to the principal amount thereof to be prepaid, plus accrued and unpaid interest thereon and the Prepayment Consideration. If the default is cured and all costs associated with such cure are paid, any remaining balance of such funds shall be paid to Borrower.

(c) Any other moneys, including expense reimbursements, received by the Lender under the Lease pursuant to the Assignment shall be applied by it to the purposes for which such moneys were paid (including, where applicable, to the reimbursement of Borrower for monies paid for the Net Lease Tenant's account pursuant to the Lease). Late charges or interest on delinquent payments under the Lease shall be available for application to interest on the Note at the Default Rate.

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by  
Borrower as of the day and year first above written.

**BORROWER:**

OMAHA REAL ESTATE INVESTMENT  
PARTNERSHIP II, L.L.C., a Delaware limited liability  
company

By:   
Luz Campa  
Its: Vice President

STATE OF MINNESOTA )

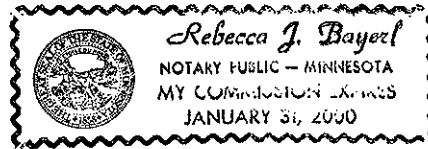
) ss.

COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of July, 1999, by Luz Campa, the Vice President of Omaha Real Estate Investment Partnership II, L.L.C., a Delaware limited liability company, on behalf of said company.

*Rebecca J. Bayerl*

Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1, in CENTRAL PARK EAST REPLAT 2, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska;

Together with non-exclusive easement rights appurtenant thereto as established by Parking Declaration dated November 30, 1989 and recorded November 30, 1989, in Book 906 at Page 481 of the Miscellaneous Records of Douglas County, Nebraska, and amended by First Supplemental Parking Declaration dated April 27, 1990 and recorded June 19, 1990, in Book 928 at Page 9 of the Miscellaneous Records of Douglas County, Nebraska, and further amended by Second Supplemental Parking Declaration dated September 14, 1990 and recorded November 7, 1990, in Book 944 at Page 1 of the Miscellaneous Records of Douglas County, Nebraska, and further amended by Third Supplemental Parking Declaration dated May 20, 1998 and recorded June 7, 1999, in Book 1295 at Page 710 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with easement rights appurtenant thereto as established by Amended and Restated Driveway Easement Agreement dated May 20, 1998 and recorded December 28, 1998, in Book 1275 at Page 724 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with non-exclusive easement rights appurtenant thereto as established by Easement dated January 30, 1904 and recorded March 2, 1943, in Book 172 at Page 367 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with non-exclusive easement rights appurtenant thereto as established by Storm Sewer Connection Agreement dated April 16, 1990 and recorded July 18, 1990, in Book 931 at Page 356 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with rights appurtenant thereto as established by Easement dated May 1, 1998 and recorded May 1, 1998, in Book 1246 at Page 441 of the Miscellaneous Records of Douglas County, Nebraska, pertaining to a no-build zone in Lot 2, Central Park East Replat 2;

And, together with rights appurtenant thereto as established by Easement Agreement dated May 20, 1998 and recorded December 28, 1998, in Book 1275 at Page 718 of the Miscellaneous Records of Douglas County, Nebraska, pertaining to a no-build zone in Lot 17, Central Park East.