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Pottawattamie County Rec John F. Sciortino
FEE BOOK 9904-22003 4/12/2004 @ 03:33EM
AGREE AGREEMENT Book:104 Page:21914 #: 27
Total Fees Collected: \$141.00

When recorded return to: Karen D. Dike
Ameritas Life Insurance Corp.
5900 "O" Street
Lincoln, NE 68510-2252

AGREEMENT TO AMEND AND RESTATE FIRST MORTGAGE

Property Address: 2101 South 35th Street
Council Bluffs, Iowa
Assessor's Parcel Number: 000035, 35000582001000
Date: April 1, 2004

THIS AGREEMENT is made this 1st day of April, 2004, by and between Ameritas Life Insurance Corp., F/K/A Bankers Life Insurance Company of Nebraska, a Nebraska corporation (herein the "Holder" and "Beneficiary"), and V & R Joint Venture, a Nebraska general partnership (hereinafter "Maker" and "Grantor") and Milo P. Vacanti and Charles J. Vacanti, individually as Guarantors.

WHEREAS, Ameritas is the holder of a certain Promissory Note (hereinafter the "Note") executed on September 10, 1986, by Vacanti and Randazzo Construction Company, in the amount of Eight Hundred Thousand and 00/100 Dollars (\$800,000.00); as amended by an Agreement to Extend and Amend Promissory Note and First Mortgage dated November 20, 1996, and such Note is secured by a First Mortgage (hereinafter the "Mortgage") covering certain real property situated in Pottawattamie County, Iowa, more particularly described as follows:

**See attached Exhibit A
which is incorporated herein by this reference**

and said Mortgage was recorded in the Official Records of the County Clerk of Pottawattamie County, Iowa, on September 10, 1986 in Book 87, Page 6485; and

WHEREAS, Ameritas and V & R Joint Venture have agreed to amend and restate the Note in that certain Amendment and Restatement of Promissory Note, of even date herewith, executed by V & R Joint Venture and amend and extend the First Mortgage by this Agreement to Amend and Restate First Mortgage on the terms set out herein.

NOW, THEREFORE, for the reasons set forth above and for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree to amend and restate said Mortgage as follows.

MORTGAGE

IT IS HEREBY AGREED:

That Borrower irrevocably grants, bargains, sells, transfers, conveys and assigns, for the benefit and security of Lender, subject to the terms and conditions of this Mortgage, all of the real estate located in the County of Pottawattamie, State of Iowa (the "Real Estate") described on Exhibit A attached hereto and by this reference made a part hereof, together with all interest which Borrower now has or may hereafter acquire in and to said Real Estate and in and to:

- (a) All oil, gas and mineral rights, all appurtenances, reversions, remainders, water, water stock and water rights and water right applications, pumps and pumping plants, pipes, flumes and

BK 104 PG 21914

ditches thereunto appertaining, all rights to the use of water as well as all rights in ditches for the irrigation of said Real Estate, and all shares of stock evidencing such rights, together with any and all appurtenances to the Real Estate, including without limitation, all development rights and credits and/or air rights;

- (b) All easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Borrower in the Real Estate, either at law or in equity, now or hereafter acquired;
- (c) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");
- (d) All machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefor (the "Fixtures");

Borrower agrees that Fixtures shall include all articles of personal property, furniture and furnishings which are so related to the Real Estate such that an interest arises in them under the real estate laws of the State of Iowa, including, without limiting the generality of the foregoing: all electric wiring, plumbing and heating fixtures, appliances and equipment for heating, lighting, refrigeration, air-conditioning and fire fighting, screen doors, screens, venetian blinds, alarm systems, safety and life support systems, stoves, ovens, dishwashers, carpeting and other floor coverings, and all other equipment now or hereafter installed in or upon said premises by Borrower and used or for use therein or thereon, it being mutually agreed that all of the aforesaid property owned by Borrower and placed on the Real Estate shall be deemed to be Fixtures, a part of the Real Estate covered by this Mortgage to the extent permitted by law; and as to the balance of said property, this Mortgage shall be deemed to be a Security Agreement between Borrower and Lender for the purpose of creating a security interest in said property in favor of Lender pursuant to the terms of Paragraph 17 below, all of which property, whether real or personal, shall secure the performance of Borrower's obligations hereunder and under the Promissory Note as hereinafter defined; provided, however, that if Borrower enters into a separate Security Agreement with Lender relating to any of said property, the terms thereof shall govern the rights and remedies of Lender with regard to the property covered thereby; provided, however, that trade fixtures or other personal property of any tenant now or hereafter installed shall not be included in this provision and shall not be affected hereby. This Mortgage shall be self-operative with respect to such personal property, but Borrower agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Lender may request in order to impose the lien hereof more specifically upon any of such property;

- (e) All articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Borrower or in which Borrower now has or hereafter acquires an interest (the "Personal Property");
- (f) All of the rents, deposits, royalties, issues and profits (the "Rents and Profits") of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto (the "Leases"), and all right, title and interest of Borrower in and to all Leases of the Real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Borrower thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligation thereunder;
- (g) All building materials and supplies now or hereafter placed on the Real Estate or in the Improvements;
- (h) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

- (i) All other or greater rights and interests of every nature in the Real Estate, the Improvements, the Fixtures and the Personal Property and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Borrower.

The property so conveyed hereunder is hereinafter collectively referred to as the "Property".

FOR THE PURPOSE OF SECURING:

- (a) Payment of the Principal sum of One Million One Hundred Fifty Thousand and No/100 Dollars, evidenced by that certain \$1,150,000.00 Promissory Note dated of even date herewith, issued by Borrower to Lender, together with all interest, accrued or otherwise, and expenses (including reasonable attorneys' fees) due thereunder and any extensions, modifications, renewals or replacements thereof (hereinafter referred to as the "Promissory Note"). The interest rate, payment terms and balance due with respect to the loan described herein may be indexed, adjusted, renewed or renegotiated in accordance with the terms of the Promissory Note and/or on account of any extensions or renewals of the Promissory Note;
- (b) Payment of late charges, prepayment charges and charges calculated on the same basis as prepayment charges upon acceleration of the indebtedness secured hereby;
- (c) Performance, discharge of and compliance with every obligation, covenant and agreement of Borrower incorporated by reference or contained herein, or contained in the Promissory Note, in a separate Assignment of Rents and Leases or Security Agreement and any other instrument now or hereafter evidencing or securing the indebtedness evidenced by the Promissory Note (all of which are collectively hereinafter called the "Security Documents");
- (d) Payment of all fees and charges of Lender set forth herein; and
- (e) Payment of all obligations incurred and all monies expended or advanced by Lender pursuant to the terms hereof or the Security Documents to protect the Property.

Notwithstanding any terms in this Mortgage to the contrary, this Mortgage shall not be deemed to secure that certain Environmental Indemnity of even date herewith executed by Borrower, which does not and shall not constitute additional security for the loan secured hereby.

TO PROTECT THE SECURITY OF THIS MORTGAGE, BORROWER COVENANTS:

1. Title:

That it is lawfully seized and possessed of a good and indefeasible title and estate to the Property in fee simple, subject only to the "Permitted Exceptions" shown on Exhibit B attached hereto and by this reference incorporated herein; that it will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; and that it will, at its expense, maintain and preserve the lien of this Mortgage as a first and paramount lien upon the Property.

2. Maintenance and Leases:

- (a) To maintain the Property in its present condition and repair; to complete or restore promptly and in good workmanlike manner any building or other Improvements which may be constructed, damaged or destroyed thereon, and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of all covenants, conditions and restrictions, if any, affecting the Property; not to remove, demolish or materially alter any building or other Improvements, or the character or use thereof at any time; not to drill or extract nor to permit the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind unless the written consent of Lender is first had and obtained; not to commit or permit any waste thereof or any act upon the Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the Property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general, and to keep within the Improvements all Fixtures and all Personal Property originally installed or thereafter placed in the Improvements except for the purpose of replacing such Fixtures or Personal

Property with Fixtures or Personal Property having fair value, both physical and economic, of the Fixtures or Personal Property so removed.

- (b) To faithfully perform all of the covenants of the lessor or landlord under any and all present and future Leases affecting the Property, and neither do nor neglect to do, nor permit to be done, anything which may diminish or impair the value of all such Leases or the Rents and Profits provided for in such Leases, or the interest of the lessor or of the Lender therein or thereunder.

3. Insurance:

- (a) To keep the Improvements now existing or hereafter erected on the Real Estate continuously insured by a standard form fire insurance policy with extended coverage, including insurance coverage for loss or damage by fire, tornado, windstorm, hail, plate glass, ordinance and law, war risk (if available), earthquake (if required by Lender), flood (if the Property is in an area which is considered a flood risk area by the U.S. Department of Housing and Urban Development or any other applicable agency), boiler, other pressure vessels and machinery coverage, smoke, sprinkler, vandalism, malicious mischief and such other insurance protection as may from time to time be reasonably requested by Lender. In no event shall such hazard insurance have coverage less than one hundred percent (100%) of the insurable replacement cost of the Improvements (as determined by an insurance appraiser acceptable to Lender). Agreed amount endorsements for replacement cost coverage shall be updated each year, and Lender shall be provided with notice each year that such endorsements have been extended for the following year.
- (b) To obtain and keep in effect so long as any amount remains owing under the Promissory Note or the Security Documents, insurance against loss of rental income for 100% occupancy in an amount equal to any period of time during which rent may abate but in no instance less than twelve (12) months' rental income, together with comprehensive general public liability insurance in an amount of not less than \$2,000,000 for general aggregate and \$1,000,000 for any one accident or occurrence in, upon or adjacent to the Property. The rent loss policy shall include a Lender's Loss Payable Endorsement and Lender shall be listed as an additional insured under the liability coverage.
- (c) That said insurance policies shall be endorsed with a standard noncontributory mortgagee's clause in favor of Lender; shall name as insured both Borrower and Lender; shall be issued by companies and shall be in such forms satisfactory to Lender; shall provide that such policies will not be cancelled or materially amended without at least sixty (60) days' prior written notice to Lender; and shall be delivered to, and remain in possession of, Lender as further security for the faithful performance of these obligations, which delivery shall constitute an assignment by Borrower to Lender to all rights thereunder, including all return premiums. Borrower shall deliver to Lender original copies of all policies of insurance required hereby and original certificates or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Borrower fails to so deliver any renewal policies, Lender may procure such insurance as it may elect and may make payment of premiums thereon, which payment is repayable on demand. Lender shall not be responsible for obtaining or maintaining such insurance. Lender, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Lender pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not an Event of Default hereunder has occurred shall Lender, by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers; and Borrower hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Borrower shall give immediate written notice to Lender; and Lender may, but is not obligated to, make proof of loss if not made promptly by Borrower.
- (d) In the event of loss, any insurance proceeds payable by reason of such loss shall be paid to Lender (and not jointly to Lender and Borrower); and if such loss is a Major Damage (as defined below), proceeds shall be applied at Lender's option to reduce the indebtedness hereby secured (and to apply such proceeds to the payment of interest, late charges, prepayment premiums or other amounts due from Borrower under the Promissory Note, this Mortgage or any other Security Document), whether then matured or to mature in the future,

in such order and manner as Lender may elect; or Lender may permit Borrower to use said proceeds to repair or replace all Improvements damaged or destroyed and covered by said policy, in which case Borrower agrees to repair and rebuild said Improvements without undue delay, holding Lender harmless for, from and against any and all liabilities, claims and liens relating to such repairs or replacements. Should Lender elect to apply the proceeds to the indebtedness, such application shall not be deemed a voluntary prepayment for purposes of the prepayment fee and prepayment premium set forth in the Promissory Note. Borrower agrees that a Major Damage, which is any loss (i) in excess of twenty-five percent (25%) of the insurable replacement cost of the Improvements or (ii) which results in the termination of any Lease or Rents and Profits constituting twenty-five percent (25%) or more of the rental income of the Real Estate (after appropriate credit for the proceeds of loss of rental income insurance required hereby) shall constitute a material impairment of Lender's security for the loan secured hereby.

Notwithstanding the foregoing, in case of partial destruction, which is not a Major Damage insurance proceeds will be made available for repair and restoration of the Property, provided:

- (i) Such destruction occurs at least one (1) year prior to the Maturity Date of the Promissory Note;
 - (ii) The amount of proceeds together with the Borrower's capital are sufficient to repair the security;
 - (iii) The Borrower provides a certificate (with appropriate supporting documentation from a contractor acceptable to Lender) that such repair and restoration can be completed within one (1) year;
 - (iv) No Event of Default has occurred and there is no history of previous defaults, delinquencies or other loan servicing problems;
 - (v) After repair, the loan-to-value ratio is less than Seventy-five percent (75%); and
 - (vi) The repaired security has the same income producing potential as before the destruction.
- (e) If Lender applies all or any portion of insurance proceeds to repair or rebuild Improvements, the insurance proceeds required for such rebuilding or repairing shall be received by Lender and held by it in and deposited in an escrow account without payment or allowance of interest. Prior to the commencement of such rebuilding or repair, Borrower shall, at its expense, prepare all plans and specifications necessary for such work and enter into a bonded fixed price construction contract with a contractor acceptable to Lender. Borrower shall promptly deposit in the escrow account an amount equal to the difference between the insurance proceeds deposited with Lender and the total contract price for such rebuilding or repair; and disbursement shall be made (not more frequently than once a month) from said account for such rebuilding or repair in accordance with a disbursement schedule, and subject to other terms and conditions acceptable to Lender, provided that such disbursements shall be charged first against funds deposited in said account by Borrower, and second, after such funds are exhausted, against the insurance proceeds deposited therein. Final payment shall be made upon Lender's receipt of a certificate of occupancy or other certificate issued by an architect, contractor satisfactory to Lender, or an appropriate governmental official, that such repair or replacement has been completed in accordance with plans, specifications and applicable laws and that the Improvements may legally be used or occupied. Lender shall be permitted to withhold any installment in escrow should Lender determine that the funds remaining in escrow are insufficient to pay for the completion of the repair or restoration.

4. Taxes and Other Sums Due:

- (a) To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting the Property, including, but not limited to, any tax assessed on the value of the Property or related to an Improvement or benefit provided to the Property or arising from the production of income attributed to the Property, whether it be in accordance with the law as it presently exists or to yet be enacted. As used herein, the term

"taxes and assessments affecting the Property" shall include any form of assessment, possessory interest tax, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition imposed by an authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, as against any legal or equitable interest of Borrower in the Property, including, but not limited to, the following:

- (i) Any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax. It is the intention of Borrower and Lender that all such new and increased assessments, taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of taxes and assessments affecting the Property for the purposes of this Mortgage;
 - (ii) Any assessment, tax, fee, levy or charge allocable to the operation of or measured by the area of the Property, including, without limitation, any gross income tax or excise tax levied in lieu of real property taxes by the state, city or federal government, or any political subdivision thereof, with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use of or occupancy of the Property, or any portion thereof; and
 - (iii) Any assessment, tax, fee, levy or charge upon this transaction or any document creating or transferring any interest or an estate in the Property.
- (b) To pay, satisfy and discharge the following amounts, in no event later than the date such amounts become due:
- (i) All encumbrances, charges and liens, with interest, on the Property, or any part thereof, which are, or appear to Lender to be prior to or superior hereto;
 - (ii) Such other charges as the Lender may deem reasonable for services rendered by Lender and furnished at the request of Borrower or any successor in interest to Borrower;
 - (iii) If the Property includes a leasehold estate, all payments and obligations required of the Borrower, or his successor in interest, under the terms of the instrument or instruments creating such leasehold, Borrower hereby agreeing not to amend, change, or modify his leasehold interest or the terms of which he has such leasehold interest, or to agree to do so, without the written consent of Lender being first obtained; and
 - (iv) All payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof.
- (c) Should Borrower fail to make any such payment, Lender, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employing counsel and paying reasonable fees of counsel. Borrower agrees to notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property and agrees that at its option, Lender, in the name of Borrower, may contest by appropriate proceedings such increase in assessment and may appear in and prosecute or defend any action or proceeding that may affect the priority of this Mortgage or the security of Lender hereunder; and Borrower will pay all costs, expenses (including costs of searching title) and attorneys' fees incurred in such action or proceeding at Borrower's sole cost and expense. All amounts, paid, suffered or incurred by Lender in exercising the authority herein granted, shall be secured hereby, shall be a lien on the Property, shall be due and payable by Borrower to Lender without demand and shall bear interest at the Default Rate set forth in the Promissory Note from the date incurred, suffered or advanced, until paid.

In the event of the passage of any law imposing a tax on this Mortgage or the interest payable under the Note, the holder of this Mortgage and of the obligations which it secures

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

- (d) Notwithstanding the foregoing, Borrower shall, together with, and in addition to the monthly payment of principal and/or interest, and on the same date on which the principal and/or interest is payable under the terms of the Promissory Note secured hereby, deposit with Lender, to be held in an account (without interest for the benefit of Borrower), a sum equal to one-twelfth (1/12) of the yearly taxes and assessments which may be levied against the Property, ground rents, if any, plus one-twelfth (1/12) of the yearly premiums for insurance required to be maintained by Borrower under the terms hereof or as may otherwise reasonably be required by Lender. If the amount of funds held shall exceed, at any time, the amount deemed necessary by Lender to provide for the payment of taxes, assessments, ground rents and insurance premiums as they fall due, such excess shall be repaid to Borrower or credited to Borrower, as Lender may determine. If the amount of funds held shall not be sufficient at any time to pay taxes, assessments, ground rents and insurance premiums as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency promptly upon notice from Lender to Borrower requesting payment thereof. Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to the Borrower any funds held. All amounts paid under this paragraph are hereby assigned to Lender as additional security for the indebtedness secured hereby; and in the event of a default in the payment of any money or the performance of any covenant or obligation herein contained or secured hereby, then any deposits made by the Borrower under this paragraph may, at the option of Lender, be applied to the payment of principal, interest and/or other sums due hereunder or under the Promissory Note or any of the other Security Documents in lieu of being applied to any of the purposes in this paragraph previously stated. Upon any assignment of this Mortgage by Lender, any funds on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate. Any interest earned on such funds shall be for the sole benefit of Lender. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

5. Sums Advanced to Bear Interest:

Borrower agrees to pay immediately upon demand any sums advanced or paid by Lender under any clause or provision of this Mortgage. Any such sums, until so repaid, shall be secured hereby, shall bear interest from the date advanced or paid at the Default Rate as provided for in the Promissory Note and shall be secured by this Mortgage.

6. Assignment of Deposits:

That as further additional security, Borrower hereby transfers and assigns to Lender during continuance of these trusts, all right, title and interest to any and all monies deposited by Borrower or deposited on behalf of Borrower with any city, county, public body or agency, sanitary district, gas and/or electric company, telephone company and any other body or agency for the installation or to secure the installation of any utility by Borrower, pertaining to the Property.

7. Default Provisions:

Time is of the essence hereof. Upon the occurrence of any one of the following which is not cured within any applicable grace period (hereinafter an "Event of Default" or "Default"), the payment of all principal, interest and any other sums due in accordance with the terms of the Promissory Note or the Security Documents shall, at the option of the Lender, be accelerated and such principal, interest and other sums shall immediately be due and payable without notice or demand; and the Lender shall have the option to foreclose any and all liens securing the payment thereof; and Lender may pursue any or all of the rights and remedies provided for in the Promissory Note, this Mortgage, or any one or more of the Security Documents, or otherwise available at law or in equity under the laws of the State of «PropertyState»:

- (a) The Borrower fails to pay when due any amount due under the Promissory Note, this Mortgage or any Security Document; or
- (b) The Borrower fails to perform any of the terms, covenants or conditions in the Promissory Note, this Mortgage or any of the Security Documents provided that Lender shall provide notice of any such default and Borrower shall have Thirty (30) days in which to cure said non-monetary default before Lender further exercises its rights and remedies hereunder; or
- (c) Any warranties, representations or certifications made by Borrower to Lender are found to be materially false or misleading; or
- (d) The Borrower or any Guarantor of the indebtedness represented by the Promissory Note ("Guarantor") shall:
 - (i) Have an order for relief entered with respect to it under any law relating to bankruptcy, insolvency, reorganization or relief of debtors ("Bankruptcy Law");
 - (ii) Not pay, or admit in writing its inability to pay its debts generally as they become due;
 - (iii) Make an assignment for the benefit of its creditors;
 - (iv) Apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it, or any substantial part of its property;
 - (v) Institute any proceedings seeking an order for relief under any Bankruptcy Law, seeking to adjudicate it a bankrupt or insolvent, seeking a dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it, or its debts, under any Bankruptcy Law, or failing to file an answer or other pleading denying the material allegations of any such proceeding filed against it (or if any creditor of Borrower shall do any of the foregoing);
 - (vi) Take any action to authorize or effect any of the foregoing actions set forth in this Paragraph (d); or
 - (vii) Fail to contest, in good faith, any appointment or proceeding described in Paragraph (e) below; or
- (e) Without the application, approval or consent of the Borrower, a receiver, custodian, trustee, examiner, liquidator or similar official shall be appointed for the Borrower, or any Guarantor, or any substantial part of the property of either, or proceeding described in Paragraph (d)(v) shall be instituted against the Borrower, or any Guarantor, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) consecutive days; or
- (f) If a final order, judgment or decree shall be entered against the Borrower, or any Guarantor, by a court of competent jurisdiction which, together with other outstanding orders, judgments and decrees against the Borrower, or any Guarantor, exceeds an aggregate of \$100,000.00 (exclusive of amounts insured against by adequate liability insurance policy), and shall continue in effect for any period of thirty (30) consecutive days without a stay of execution; or
- (g) Should it be discovered after the execution and delivery of this instrument that there is a defect in the title to, or a lien or encumbrance of any nature, on the Real Estate or the Personal Property described in the Security Documents prior to the lien of the Lender under this Mortgage or the Security Documents, and not disclosed in the policy of title insurance issued to the Lender insuring the priority of the Mortgage covering the Real Estate, unless such defect is cured within thirty (30) days after written notice of such defect from the Lender to the Borrower; or
- (h) If any prior lien, encumbrance or homestead claim is determined to exist against the Real Estate adverse to the priority of the lien given to the Lender hereof in this Mortgage and not disclosed in the policy of title insurance issued to the Lender insuring the priority of this Mortgage, unless the Borrower shall, within thirty (30) days after demand by the Lender,

satisfy or otherwise secure the release of such prior lien, encumbrance or homestead claim; or

- (i) Should the Borrower, or any successor in interest of the Borrower, voluntarily or involuntarily, sell, exchange, convey, transfer, contract to sell, lease with option to purchase, change the character or use of, or further encumber the Property or any other collateral covered by the Security Documents, or any part thereof, or any interest therein, except as therein permitted, without the prior written consent of the Lender of this Mortgage in each such instance first had and obtained; or
- (j) Should the Borrower be divested of title to the Real Estate described in this Mortgage, or any part thereof, or any interest therein, either voluntarily or involuntarily, as a result of any condemnation proceedings, except where the proceeds of such proceedings are paid to the Lender; or
- (k) If legal action or other proceedings are instituted to enforce or foreclose any subordinate mortgage, deed of trust, or security interest or other lien or encumbrance of any kind upon the Property or any portion thereof.

8. Restriction On Transfer and Additional Financing:

- (a) The financial stability, managerial and operational ability, creditworthiness and business reputation of Borrower and of those persons having a direct or beneficial interest in Borrower, as well as the equity of Borrower in the Property and the projected cash flow from the Property to pay operating costs and debt service are a substantial and material consideration to Lender in its agreement to make the loan to Borrower which is evidenced by the Promissory Note and secured by this Mortgage. Therefore, in order to induce Lender to make the loan, Borrower agrees that without the prior written consent of Lender, which consent may be withheld for any or no reason, Borrower shall not:
 - (i) Voluntarily or involuntarily sell, exchange, convey, transfer, contract to sell or lease with option to purchase (collectively a "Transfer") all or any part of or interest in the Property or any other collateral covered by the Security Documents; or
 - (ii) Voluntarily or involuntarily further encumber the Property by any mortgage, deed of trust, assignment of rents or security interest, or otherwise subject all or any part of the Property to any lien or charge, contractual, statutory, by operation of law or otherwise (collectively an "Encumbrance"); or
 - (iii) If Borrower or any successor or assign of Borrower is a corporation, Transfer fifty percent (50%) or more of the issued and outstanding shares of any class of shares of Borrower or issue new shares equal to fifty percent (50%) or more of the issued and outstanding shares of any class of shares of Borrower; or
 - (iv) If Borrower or any successor or assign of Borrower is a general or limited partnership or a joint venture, make any Transfer of any general partnership interest or joint venture interest of Borrower; or
 - (v) If Borrower or any successor or assign of Borrower is a limited liability company, make any Transfer of a majority of the membership interest to a non-member; or
 - (vi) Transfer or change the management of the Property to any person or entity other than Borrower; or
 - (vii) Permit a Transfer of any or all of a Promissory Note Guarantor's ownership interest in Borrower, if any; or
 - (viii) Permit the Transfer of the controlling interest of Borrower.

Should Borrower receive knowledge, either actual or constructive, of any Transfer of or Encumbrance on the title to the Property, or any part thereof, or of any contract providing for any such Transfer or Encumbrance, Borrower shall immediately, upon obtaining such knowledge, notify Lender.

- (b) In the event that Borrower or any successor in interest of Borrower shall breach the covenants contained in Paragraph 8(a), all indebtedness secured by this Mortgage, irrespective of the maturity date thereof, shall, at the sole option of the Lender, become immediately due and payable without demand or notice.
- (c) If Lender consents to any Transfer or Encumbrance referred to in Paragraph 8(a), Borrower shall pay to Lender all costs, attorneys' fees and other expenses incurred by Lender in reviewing, negotiating, preparing and recording documents in connection with any such Transfer or Encumbrance. Consent to any one such Transfer or Encumbrance shall not be deemed to be a waiver of the right to require consent to future or successive Transfers or Encumbrances. If consent should be given, any such Transfer or Encumbrance shall be subject to this Mortgage; and any transferee shall assume all obligations under the Promissory Note, this Mortgage and other Security Documents and agree to be bound by all provisions contained herein and therein. Such assumption shall not, however, release Borrower or any Guarantor, for liability under the Promissory Note, this Mortgage or any other of the Security Documents. This covenant shall run with the Property and shall remain in full force and effect until the indebtedness secured hereby is satisfied in full; and Lender may, without notice to Borrower, deal with such transferees with reference to the indebtedness or other obligations secured hereby in the same manner as with Borrower, without in any way altering or discharging Borrower's liability hereunder or the indebtedness secured hereby or the liability of any Guarantor with respect thereto.
- (d) Notwithstanding the foregoing, sale or transfer of the security or of any interest in the borrowing entity to immediate family members or a family trust for estate planning purposes shall not be considered a Transfer for purposes of this paragraph.

9. Mechanics' and Materialmen's Liens:

It is understood and agreed that the lien of this Mortgage shall have priority at all times over any and all construction, furnishers', mechanics' and materialmen's liens. It is stipulated and agreed that no contract for labor or materials will be let by Borrower except with the express stipulation that the mechanics' and materialmen's liens therefor shall at all times be subordinate to the lien of this Mortgage.

10. Compliance With Laws, Etc.:

Borrower, their lessees or assigns, shall occupy and use the Property in accordance with all federal, state or local laws, statutes, ordinances, regulations or the like, including, but not limited to, the Americans with Disabilities Act of 1990, zoning and use laws, toxic waste laws and landlord-tenant statutes.

11. Litigation:

Borrower shall defend this Mortgage in any action or proceeding purporting to affect the Property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Lender, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property; and Lender is hereby authorized, without obligation so to do, to commence, appear in or defend any such action, whether brought by or against Borrower or Lender, or with or without suit, to exercise or enforce any other right, remedy or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding; and Borrower or Lender may appear to intervene in any action or proceeding, and retain counsel therein, and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Lender so appears or defends, Borrower on demand shall pay all costs and expenses of Lender, including costs of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Lender may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Lender in the Property is directly questioned by such action, including but not limited to partition, condemnation, reorganization, bankruptcy (whether Chapters 7, 11 or 13, or any other similar or successor statutes), probate and administrative proceedings, as well as any other proceeding where proof of claim is required to be filed or in which it becomes necessary to defend or uphold the terms of this Mortgage.

12. Condemnation:

In the event the Property or any part thereof is taken or damaged under the power of eminent domain, by condemnation or by sale in lieu thereof, the damages awarded, the proceeds for the taking of, the rights of action and the consideration for such acquisition, to the extent of the full amount of the remaining unpaid indebtedness secured hereunder, will be assigned to Lender and after deducting any expenses of Lender, including attorneys' fees, will be applied on account of the last maturing installments of such indebtedness. Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. Borrower agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Lender may require.

Notwithstanding the preceding, in the case of a partial condemnation, proceeds from such condemnation will be made available for repair and restoration of the Property provided:

- (a) Such condemnation occurs at least one (1) year prior to the Maturity Date of the Promissory Note; and
- (b) The amount of the condemnation proceeds together with Borrower's capital are sufficient to restore the Security; and
- (c) The Borrower provides a certificate with appropriate supporting documentation from a contractor acceptable to Lender that such repair or restoration can be completed within one (1) year; and
- (d) An Event of Default has not occurred and there is not a history of previous defaults, delinquencies or other loan servicing problems; and
- (e) After restoration, the loan-to-value ratio is less than Seventy-five percent (75%); and
- (f) The restored Security has the same income producing potential as before the condemnation.

If Lender agrees or is required hereunder to apply all or any portion of condemnation proceeds to repair or restore Improvements, disbursement of such proceeds shall be made in the manner described in sub-paragraph 3(e) hereof.

13. Discharge and Release:

Upon written request of Lender stating that all sums secured hereby have been paid, Lender shall discharge and release this Mortgage. The recitals in such discharge of any matters of fact shall be conclusive proof of the truthfulness thereof. Such discharge and release shall automatically constitute the discharge and release of the Assignment of Rents and Profits hereinbefore assigned to Lender.

14. Right to Collect and Receive Rents and Profits:

Borrower absolutely and irrevocably assigns to Lender the Rents and Profits of the Real Estate, together with the immediate and continuing right to collect and receive the same, for the purposes and upon the terms set forth in this Mortgage, provided that the foregoing assignment shall not impose upon Lender any duty to produce rents from the Real Estate and said assignment shall not cause Lender to be a "mortgagee in possession" for any purpose. The assignment of Rents and Profits and Leases from Borrower to Lender provided for above is absolute and irrevocable; however, notwithstanding any other provisions hereof, Lender hereby grants permission to Borrower to collect and retain the Rents and Profits of the Property as they become due and payable until a Default shall occur under the Promissory Note, under this Mortgage or under any Security Document. Upon any such Event of Default, Lender may at any time without notice, either in person, by agent or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Property, or any part thereof, make, cancel, enforce or modify Leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the Rents and Profits thereof, including those past due and unpaid; apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby and in such order as Lender may determine; and except for such application, Lender shall not be liable to any person for the collection or non-collection of any Rents

and Profits, for the failure to assert or enforce any of the foregoing rights, nor shall Lender be charged with any of the duties and obligations of a mortgagee in possession. The entering upon and taking possession of the Property, the collection of such Rents and Profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. This assignment of rents and profits described in this Paragraph 14 shall be deemed perfected, absolute and choate, upon the recording of this Mortgage. In the event of any conflict between the terms of this Paragraph 14 and the terms of any separate assignment of rents and leases, the terms providing Lender with the most extensive or expansive rights and remedies shall control.

15. Remedies Upon Default:

- (a) Upon the occurrence of one or more Events of Default as defined in this Mortgage, or Default by Borrower in the performance of any other agreement hereunder, or under any instrument or agreement secured hereby, Lender may declare all sums secured hereby immediately due and payable; and at the option of the Lender, this Mortgage may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; a receiver may be appointed or Lender may exercise such other rights as set out herein.
- (b) In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Lender under any of the Security Documents, there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Property. All expenditures and expenses of the nature of this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Property and the maintenance of the lien of this Mortgage, including any litigation or proceeding affecting this Mortgage, the Promissory Note, or said Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceedings, shall be immediately due and payable by Borrower, with interest thereon at the default interest rate as set out in the Promissory Note and shall be secured by this Mortgage.
- (c) In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Lender, Borrower shall surrender to Lender and Lender shall be entitled to take actual possession of the Property, or any part thereof, personally or by its agent or attorneys, as for condition broken and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of said Property, together with all documents, books, records, papers, and accounts of Borrower or the then owner of the Property relating thereto, and may exclude Borrower, their agents, or servants, wholly therefrom and may, as attorney-in-fact or agent of Borrower or in its own name as Lender and under the powers herein granted: (a) hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns, may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Property including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower; (b) cancel or terminate any lease, sublease or occupancy agreement for any cause or on any ground which would entitle Borrower to cancel the same; (c) elect to disaffirm any lease, sublease or occupancy agreement made subsequent to this Mortgage or subordinated to the lien hereof; (d) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for option to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose

interests in the Property are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (e) make all replacements, alterations, additions, betterments and improvements to the Property and furniture, fixtures and equipment therein contained as to Lender may seem judicious, to insure and reinsure the Property and all risks incidental to Lender's possession, operation and management thereof and to receive all avails, rents, issues and profits.

- (d) Any avails, rents, issues and profits of the Property received by Lender after having possession of the Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage or of any separate assignment of rents or assignment of leases, shall be applied in payment of or on account of the following, in such order as Lender (or in case of a receivership, as the court) may determine:
- (i) to the payment of the operating expense of the Property, including reasonable compensation to Lender or the receiver and its agent or agents, if management of the Property has been delegated to an agent or agents (and shall also include lease commissions and other compensation and expenses of seeking and procuring occupants or tenants and entering into occupancy agreements or leases), established claims for damages, if any, premiums on insurance hereinabove authorized, and all expenditures and expenses, including attorneys' fees, paid or incurred by or on behalf of Lender in connection therewith;
 - (ii) to the payment of all taxes, special assessments and water charges and sewer taxes now due or which may hereafter become due on the Property, or which may become a lien prior to the lien of this Mortgage;
 - (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of said Property, including the cost from time to time of installing or replacing furniture, fixtures and equipment, and of placing said Property in such condition as will, in the judgment of Lender or receiver, make it readily rentable or available to be used under the terms of an occupancy agreement;
 - (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, and then to any other indebtedness owing to Lender by Borrower;
 - (v) any overplus or remaining funds to Borrower, its successors or assigns, as their rights may appear.
- (e) Upon or at any time after the filing of any complaint to foreclose this Mortgage, the court may, upon application, appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Property and to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period (provided that the period of redemption has not been waived by Borrower), as well as during any further times when Borrower, its heirs, administrators, executors, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management and operation of the Property, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder, it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage, indebtedness, satisfaction of any foreclosure decree, or issuance

of any certificate of sale or deed to any purchaser. Said receiver, to the extent permitted by law, may also be authorized by the court to enter into occupancy agreements granting individuals a right and license to occupy portions of the Property.

- (f) The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on the account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15(b) hereof; second, in payment of all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Promissory Note, with interest thereon at the default interest rate as set out in the Promissory Note; third, in payment of all principal and interest remaining unpaid on the Promissory Note; and fourth, any overplus to Borrower, its successors or assigns, as their rights may appear.
- (g) Upon the occurrence of any Event of Default under this Mortgage, under the Promissory Note or under any of the Security Documents and following any acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to a foreclosure sale, shall constitute an evasion of the payment terms of the indebtedness secured hereby and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include the prepayment fee, premium and any other charge required under the prepayment privilege contained in the Promissory Note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a charge equal in amount to the prepayment fee, premium and other charge calculated under the prepayment provisions, as set forth in the Promissory Note secured hereby.
- (h) Borrower agrees, for itself and any and all persons or concerns claiming by, through or under Borrower, that if it, or any one or more of them, shall hold possession of the Property, or any part thereof, subsequent to a foreclosure sale, it, or the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.
- (i) To the extent permitted by law, in addition to the foregoing, in the event of a Default under this Mortgage, the Promissory Note or any of the Security Documents, Lender shall have all other rights and remedies provided herein, in the Promissory Note, the Security Documents and available at law or in equity. The failure of Lender to exercise the option for acceleration of maturity and/or foreclosure following any default as aforesaid or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments hereunder shall not constitute a waiver of any such default, nor extend or affect the grace period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at the option of Lender, be rescinded by written acknowledgement to that effect by Lender, and shall not affect Lender's right to accelerate the maturity for any future default.
- (j) If the Property is less than ten (10) acres in size and if Lender waives in any foreclosure proceeding any right to a deficiency judgment against Borrower, then the period of redemption from judicial sale shall be reduced to six (6) months. If the court finds that the Property has been abandoned by Borrower and if Lender waives any right to a deficiency judgment against Borrower, then the period of redemption from judicial sale shall be reduced to sixty (60) days. The provisions of this paragraph shall be construed to conform to the provisions of §628.26 and §628.27 of the 1989 Code of Iowa, or its successor.

16. Personal Property:

This Mortgage is also intended to encumber and create, and Borrower does hereby grant to Lender, a security interest in:

- (a) All Personal Property and Fixtures now or hereafter placed in or affixed to the above Real Estate and Improvements and used on or in connection therewith, whether or not the same shall have or would have become a part of said Real Estate by attachment thereto, including without limitation all elevators, and ventilating apparatus, awnings, carpeting and other floor

covering materials, draperies, gas and oil tanks and such other goods, equipment and personal property, including but not limited to furniture, furnishings, and all maintenance and other such equipment as is usually furnished by landlords in renting retail business and commercial office space or warehouse space, including the Rents and Profits and all additions thereto and replacements thereof.

- (b) All the Rents and Profits and all rights, causes of action, demands and claims which the Borrower is or may be entitled to assert in Bankruptcy Court, or otherwise, by reason of the termination, rejection or breach of any Lease of any portion of said Property.
- (c) All items described on Exhibit C attached hereto and incorporated herein by this reference.

17. Security Agreement:

This Mortgage constitutes a security agreement between Borrower and Lender with respect to all Fixtures and Personal Property in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of a Default hereunder not cured within any applicable grace period, Lender shall have the right to cause any of the Property which is subject to the security interest of Lender hereunder to be sold in one or more public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of the Property by Lender, as provided for in this Mortgage; and Lender shall further have all rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Lender's fees and legal expenses. Lender shall have the right to enter upon the Real Estate, the Improvements, any other real property or any Personal Property which is the subject of the security interest granted herein to take possession of, assemble and collect such Fixtures and Equipment and Personal Property or to render it unusable, or Borrower, upon demand of Lender, shall assemble such Fixtures and Equipment and Personal Property and make it available to Lender at a place deemed reasonably convenient to Lender. If notice is required by law, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of any property which is subject to the security interest of Lender or of the time of or after which any private sale or other intended disposition is to be made; and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

18. Fixture Financing Statement:

This Mortgage is intended to be a financing statement within the purview of the Uniform Commercial Code with respect to those items of the Property as constitute fixtures on the Real Estate. The address of Borrower (Debtor) and Lender (Secured Party) are set forth on the first page of this Mortgage. This Mortgage is to be filed for record in the real property records of Pottawatomie County, Iowa, where the Real Estate is located. Borrower is the record owner of the Real Estate. To the extent allowed by law, Borrower hereby authorizes the Mortgagee to file financing statements and continuation statements with respect to the Property in the appropriate filing offices, without the Borrower's signature.

19. No Waiver by Lender:

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

20. Time of the Essence:

Time is of the essence in all of Borrower's obligations hereunder.

21. Inspection and Business Records:

Borrower agrees to provide Lender with an annual building operating statement and current rent roll within one hundred twenty (120) days of the end of each fiscal year, setting forth all income, expenses and occupancy information relating to the Property. If in default, Lender shall have the further right to require that such statements be prepared in accordance with generally accepted accounting principles by an independent certified public accountant satisfactory to Lender. All statements provided under this Paragraph 21 will be provided at Borrower's cost.

22. Remedies:

No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. To the extent allowed by law, every power or remedy hereby given to Lender, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with or after the sale is made hereunder; and on any Default of Borrower, Lender may, at its option, offset against any indebtedness secured hereby; and the Lender is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness of the Borrower to the Lender any and all sums of money of Borrower which Lender may have in its possession or under its control, including without limiting the generality of the foregoing, any savings account, deposit, investment certificate, escrow or trust funds.

It is expressly understood that except as specifically provided below, there is no personal liability of the Borrower hereunder or under the Security Documents and no monetary or deficiency judgment shall be sought or enforced against the Borrower; provided, however, that a judgment may be sought against the Borrower only to the extent necessary to enforce the rights of the Lender or other beneficiary hereof in, to or against the Property securing the indebtedness evidenced by the Promissory Note and covered by the Security Documents and the sole and exclusive remedy of the Lender or other beneficiary hereof for any default hereunder or under the aforesaid instruments shall be against such Property except that there shall be personal liability in the following circumstances (the "Obligations"): (i) the misapplication of any rents or profits from such Property after the occurrence of a Default, (ii) any damages, costs, or expenses incurred as a result of fraud, material misrepresentation or bad faith by Borrower, (iii) any liability arising under any agreed upon Environmental Indemnity, (iv) the misapplication of any security deposits paid by tenants, (v) damages caused by any misappropriation or misapplication of insurance proceeds or condemnation awards, (vi) amounts necessary to repair or replace any damage caused by willful or wanton acts or omissions of Borrower, (vii) amounts necessary to pay delinquent real estate taxes and assessments, (viii) damages arising from Maker's failure to procure and maintain insurance required by the Security Documents; (ix) costs and expenses incurred in the enforcement of this clause; and (x) all accrued unpaid interest.

23. Savings Clause:

If under any circumstances whatsoever, the interest payable to Lender by Borrower is at a rate in excess of that permitted under applicable law to be paid by Borrower, then, the interest payable to Lender shall be reduced to the maximum amount permitted under applicable law; and if under any circumstance Lender shall ever receive anything of value deemed interest by applicable law which would exceed interest at the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note and the obligations owing under this Mortgage and not to the payment of interest; or if such excessive interest exceeds the unpaid balance of principal of the Promissory Note and the obligations owing under this Mortgage, such excess shall be refunded to Borrower.

24. Waiver of Jury Trial:

BORROWER, BY EXECUTION OF THIS MORTGAGE, AND LENDER BY ACCEPTANCE OF THIS MORTGAGE, EACH HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS

MORTGAGE, THE NOTE AND OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY, ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY OF THE PARTIES. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO LENDER MAKING THE LOAN WHICH IS THE SUBJECT MATTER OF THIS TRANSACTION. BORROWER FURTHER ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY AND VOLUNTARILY MADE AFTER FULL OPPORTUNITY TO DISCUSS SAME WITH COUNSEL OF BORROWER'S CHOICE.

25. Illegality:

In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. If the lien of this Mortgage is or becomes invalid or unenforceable, the amount secured hereby shall become immediately due and payable. Should this instrument be construed or adjudicated to be ineffective or unenforceable as a Mortgage, then this instrument shall be construed and enforced as a real property mortgage, with Borrower as mortgagor and Lender as mortgagee.

26. General Provisions:

- (a) This Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns; however, nothing herein is intended to be a waiver by Lender of the provisions of Paragraph 8 hereof.
- (b) The term "Lender" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Lender herein.
- (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.
- (d) Captions and paragraph headings used herein are for convenience only, are not a part of this Mortgage and shall not be used in construing it.
- (e) The term "Borrower" shall mean the original Borrower hereunder and any subsequent owner of the Property who acquires the same subject to this Mortgage with the consent of the Lender. If more than one person is now or hereafter named herein as Borrower, each obligation of Borrower shall be the joint and several obligation of each such person.
- (f) The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

27. Representations:

The representations made by Borrower to Lender, through either itself or any other agent, shall survive the closing of the loan evidenced by the Promissory Note and secured by this Mortgage and by the recording of this Mortgage. Said representations were important to Lender in determining the ability of the Property to support the debt service of this Loan.

28. Address for Mailing Notices:

Borrower hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder be mailed to Borrower at its address set forth above. All notices, demands, requests or other communications with respect to this Mortgage shall be in writing and shall be effective if personally delivered or mailed by certified mail following three (3) days deposit in the United States mail, postage prepaid, to Borrower or Lender, respectively, at the addresses set forth above. Any party may at any time change its address for notices by delivering or mailing to the other parties a notice of said change.

29. Law:

This Mortgage, the rights of the Lender hereunder and the Promissory Note secured hereby shall be construed and enforced according to the laws of the State of Iowa.

30. Entire Contract:

This contract together with all other Security Documents embodies the final, entire agreement among the parties hereto and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. The provisions of the Mortgage may be amended or waived only by an instrument in writing signed by the parties hereto.

31. No Agricultural Use:

The Property is not used principally or primarily for agricultural or farming purposes.

32. Additional Representation:

Borrower hereby represents and warrants to Lender that:

(a) Borrower:

- (i) If it is a corporation, is validly existing and in good standing under the laws of the State of Iowa, or if it is a partnership or joint venture, is duly formed, in good standing and existing under the laws of the State of Iowa, or if it is a Trust, is validly formed under the laws of the Iowa;
- (ii) Has the power and authority to own its properties and to carry on its business as now being conducted;
- (iii) Is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and
- (iv) Is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) The execution, delivery and performance by Borrower of this Mortgage, the Promissory Note and all other Security Documents, and the borrowing evidenced by the Promissory Note:

- (i) Are within the powers of Borrower;
- (ii) Have been duly authorized by all requisite action;
- (iii) Have received all necessary governmental approval; and
- (iv) Will not violate any provision of law, any order of any court or other agency or government, or the Articles of Incorporation and By-laws, Partnership Agreement or Joint Venture Agreement of Borrower, should Borrower be a corporation, partnership or joint venture, respectively.

(c) This Mortgage, the Promissory Note and all other Security Documents constitute the legal, valid and binding obligations of Borrower and other obligors named therein, if any, in accordance with their respective terms.

(d) Neither the execution and delivery of this Mortgage, the Promissory Note or other Security Documents, the consummation of the transactions contemplated hereby, or thereby, nor the fulfillment of or compliance with the terms and conditions of this Mortgage, the Promissory Note, or other Security Documents, conflicts with or results in a breach of any of the terms, conditions or provisions of any restrictions or any agreement or instrument to which Borrower is now a party or by which it is bound.

33. Hazardous Materials:

(a) **Definitions.** For the purpose of this Real Estate Mortgage, Borrower and Lender agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

- (i) **Hazardous Materials:** Any substance the presence of which on the Property is regulated by any Governmental Requirements (as hereinafter defined), including but not limited to: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any petroleum-based products; and (vi) underground storage tanks, whether empty, filled or partially filled with any substance.
- (ii) **Governmental Requirements:** All laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Borrower or the Property.
- (iii) **Hazardous Materials Contamination:** The contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, over or under the Property by Hazardous Materials, or the contamination of the improvements, facilities, soil, ground-water, air or other elements on, over or under any other property as a result of Hazardous Materials at any time (whether before or after the date of this Real Estate Mortgage) emanating from the Property.

b. **Representations and Warranties.** Borrower hereby represents and warrants that:

- (i) No Hazardous Materials are located on the Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Property, or transported to or from the Property. No portion of the Property is being used or has been used at any previous time, for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials nor is any part of the Property affected by any Hazardous Materials Contamination.
- (ii) To the best of Borrower's knowledge (i) no Hazardous Materials are located on property adjoining the Property; (ii) no property adjoining the Property has ever been used at any previous time for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials; and (iii) no property adjoining the Property is affected by Hazardous Materials Contamination.
- (iii) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on the Property.
- (iv) No polychlorinated biphenyls or materials containing polychlorinated biphenyls are located on or in the Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.
- (v) No underground storage tanks are located on the Property or, to the best of Borrower's knowledge, were previously located on the Property and subsequently removed or filled.
- (vi) No investigation, administrative order, consent order, agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Property. The Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to

environmental matters or Hazardous Materials. There is no condition on the Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Borrower has received no communication from or on behalf of any Governmental Authority that any such condition exists. The Property is not currently on, and to the best of Borrower's knowledge, has never been on, any federal, state or local "Superfund" or "Superlien" list.

- (vii) Except for studies, audits, and reports pertaining to the Property which have been made available to Lender, there have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or which are in the possession of or available to Borrower in relation to the Property.
 - (viii) All representations and warranties contained in this Paragraph 33 shall survive the consummation of the transactions contemplated by this Real Estate Mortgage.
- c. **Covenants.** Borrower agrees: (a) that Borrower shall not receive, store, dispose or release any Hazardous Materials on or to the Property or transport any Hazardous Materials to or from the Property or permit the existence of any Hazardous Materials Contamination; (b) to give written notice to Lender immediately upon Borrower's acquiring knowledge of the presence of any Hazardous Materials on the Property or of the transport of any Hazardous Materials to or from the Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (c) promptly, at Borrower's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Lender with satisfactory evidence of such compliance; (d) to provide Lender, within thirty (30) days after demand by Lender, with financial assurance evidencing to Lender's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof; and (e) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Property, and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.
- d. **Liens.** Borrower shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Property, including any so-called state, federal or local "Superfund" lien relating to such matters.
- e. **Site Assessments.** Lender (by its officers, employees and agents) at any time and from time to time, either prior to, in the event Lender has reasonable belief that environmental contamination has occurred, or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any Governmental Requirements relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Borrower which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below-ground testing for environmental damage or the presence of Hazardous Materials or Hazardous Materials Contamination on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Borrower will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lender shall make the results of such Site Assessments fully available to Borrower, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by

Borrower upon demand of Lender and any such obligations shall be indebtedness secured by this Real Estate Mortgage.

- f. **Indemnification.** Borrower shall at all times retain any and all liabilities arising from the presence, handling, treatment, storage, transportation, removal or disposal of Hazardous Materials on the Property. Regardless of whether any Site Assessments are conducted hereunder, and regardless of whether any Event of Default (as defined in Paragraph 7 of this Real Estate Mortgage) shall have occurred and be continuing or any remedies in respect to the Property are exercised by Lender, Borrower shall defend, indemnify and hold harmless Lender from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions), losses, costs and expenses (including, without limitation, reasonable attorneys' fees and remedial costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future (whether before or after the culmination of the transactions contemplated by this Real Estate Mortgage) be incurred or suffered by Lender by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Borrower contained or referred to in this Paragraph 33 or in any loan agreement made and entered into between Borrower and Lender relating to the Property or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Property or the applicability of any Governmental Requirements relating to Hazardous Materials, regardless of whether or not caused by or within the control of Borrower or Lender.

Such Liabilities shall include, without limitation: (i) injury or death to any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of any improvements now or hereafter situated on the Property or elsewhere, and the cost of any repair or remediation of any such improvements; (iv) the cost of any activity required by any Governmental Authority; (v) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any Hazardous Materials, on, from or under the Property; and (vi) the imposition of any liens on the Property arising from the activity of Borrower or Borrower's predecessors in interest on the Property or from the existence of Hazardous Materials upon the Property or Hazardous Materials Contamination. The covenants, warranties, agreements and indemnifications contained in this Paragraph 33 shall survive the consummation of the transactions contemplated by this Real Estate Mortgage.

- g. **Right of Entry.** Lender shall have the right but not the obligation, without in any way limiting Lender's other rights and remedies under this Real Estate Mortgage, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on or under the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Property, or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property, or other action, and/or which, in Lender's sole opinion, could jeopardize Lender's security upon this Real Estate Mortgage. All costs and expenses paid or incurred by Lender in the exercise of any such rights shall be indebtedness secured by this Real Estate Mortgage and shall be payable by Borrower upon demand.

34. **Discretionary Matters:**

Borrower acknowledges and agrees that should any matter herein depend or be contingent upon the discretion, judgment or consent of the Lender, it is to be presumed that the Lender will take such actions and consider such elements in exercising said discretion, making such judgment, or granting or denying such consent as are required, based on Lender's good faith

subjective judgment, to protect the security interest of Lender in the Property and to ensure repayment of the loan secured hereby.

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

[signature page to follow]

GRANTOR:

V & R Joint Venture
a Nebraska general partnership

By: V & R Company
a Nebraska general partnership

By: Milo P. Vacanti
Milo P. Vacanti
Its: General Partner

By: Vacrand, Inc.
a Nebraska corporation

By: Milo P. Vacanti
Milo P. Vacanti
Its: President

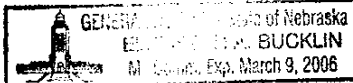
BENEFICIARY:

Ameritas Life Insurance Corp.
A Nebraska corporation

By: Jon B. Weinberg
Jon B. Weinberg
Its: Vice President - Mortgage Loans & Real Estate

STATE OF Nebraska)
COUNTY OF Douglas) ss.

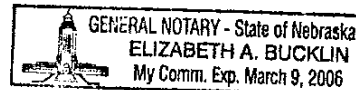
This instrument was acknowledged before me on April 1, 2004, by Milo P. Vacanti, general partner of V & R Company, a Nebraska general partnership on behalf of V & R Joint Venture, a Nebraska general partnership.



Elizabeth A. Bucklin
(Signature of notarial officer)

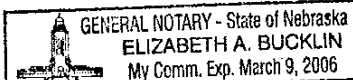
(Seal, if any)

My Commission Expires: 3-9-06



STATE OF Nebraska)
COUNTY OF Douglas) ss.

This instrument was acknowledged before me on April 1, 2004, by Milo P. Vacanti, President of Vacrand, Inc., a Nebraska corporation, on behalf of V & R Joint Venture, a Nebraska general partnership.



Elizabeth A. Bucklin
(Signature of notarial officer)

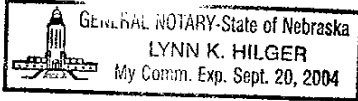
(Seal, if any)

My Commission Expires: 3-9-06

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 31st day of March, 2004, by Jon B. Weinberg, Vice President – Mortgage Loans and Real Estate of Ameritas Life Insurance Corp., a Nebraska corporation, on behalf of the corporation.

WITNESS my hand and official seal.



Lynn K. Hilger
Notary Public

My Commission Expires: 9-20-04

EXHIBIT A

Legal Description of Property

To Real Estate Mortgage, Security Agreement, Assignment of Rents and Financing Statement

Part of the West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 3, and Part of the East Half of the North East Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 4, all in Township 74 North, Range 44 West of the 5th P.M., Pottawatomie County, in the City of Council Bluffs, Iowa, which is more particularly described as follows:

Commencing at the West Quarter (W $\frac{1}{4}$) corner of said Section 3; thence West, 346.40 feet; thence North 1154.61 feet to the point of beginning; thence N 53°12'15" E, 465.32 feet; thence S 89°37'00" E, 12.55 feet; thence S 00°23'00" W, 70.05 feet; thence S 36°47'45" E, 286.24 feet; thence southwesterly 55.19 feet along a 316.48 foot radius curve to the left; thence S 53°12'15" W, 319.85 feet; thence S 74°37'40" W, 41.07 feet; thence N 81°47'45" W, 21.21 feet; thence N 44°14'50" W, 38.56 feet; thence along the northeasterly right-of-way line of 35th Street Diagonal N 36°47'45" W, 276.62 feet to the point of beginning.

EXHIBIT B

Permitted Exceptions

To Real Estate Mortgage, Security Agreement, Assignment of Rents and Financing Statement

7. 2002/2003 fiscal year taxes total \$49,950.00, 1st installment paid, 2nd installment due not yet delinquent.
8. Mortgage filed September 10, 1986 in Book 87 at Page 6485, in favor of Bankers Life Insurance Company of Nebraska, in the amount of \$800,000.00; and Extension filed November 20, 1996, in Book 97 at Page 20157.
9. Assignment of Leases and Rents, filed September 1, 1986, in Book 87 at Page 6553, by and between Vacanti & Randazzo Construction Company, and Bankers Life Insurance Company of Nebraska.
10. Right of Way Agreement granted to The National Cooperative Refinery Association, over a portion of the premises in question, as set forth in instrument filed November 24, 1948, in Book 996 at Page 515.
11. Right of Way Agreement granted to The National Cooperative Refinery Association, over a portion of the premises in question, as set forth in instrument filed March 18, 1948, in Book 982 at Page 49.
12. Covenants, conditions, restrictions and easements contained in Warranty Deed filed February 11, 1972, in Book 72 at Page 13519.
13. Terms and provisions of the instrument captioned: Reciprocal Easement Agreement, filed in Book 77 at Page 17340.
14. Terms and provisions of an unrecorded Lease dated August 24, 1972, by and between Vacanti & Randazzo Construction Company, lessor and Liberty-U/A Tape Duplicating, Inc., a Subsidiary of United Artists Records, lessee; and unrecorded Amendment dated August 6, 1976; and unrecorded Assignment and Assumption of Lease Agreement dated July 1, 1978, to Capitol Records, Inc. Said Lease contains a right of first refusal.
15. Terms, provisions and conditions contained in Unrecorded Lease dated August 6, 1976; and Assignment of lessee's interest to Capitol Records, Inc., by an unrecorded Assignment and Assumption of Lease Agreement dated July 1, 1978.
16. Easement granted to Northwestern Bell Telephone Company, over a portion of the premises in question, as set forth in instrument filed March 25, 1990, in Book 90 at Page 19540.

EXHIBIT C

Personal Property Description

To Real Estate Mortgage, Security Agreement, Assignment of Rents and Financing Statement

- A. All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the operation of, the real property located in Pottawatomie County, Iowa, and more particularly described as Exhibit A (the "Property") (whether such items are leased, owned absolutely or subject to any title retaining or security instrument, or otherwise used or possessed, but excluding those items owned by tenants in accordance with their leases), including, without limitation, all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric, and communication fixtures, equipment, and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators, and other appliances, all escalators and elevators, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding and draperies, all furnishings of public spaces, halls and lobbies and all shrubbery and plants.
- B. All present and future contracts and policies of insurance which insure the Property or any building, structures, or improvements thereon, or any such fixtures or personal property, against casualties and theft, and all proceeds and rights thereto which may be or become payable by virtue of any such insurance contracts or policies.
- C. All the rents, revenues, issues, profits and income of the Property, and all right, title, and interest of Borrower in and to all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and all right, title and, interest of Borrower thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, together with all guaranties of tenants' or occupants' performance thereunder.
- D. All general intangibles relating to the development or use of the Property, including, without limitation, all permits, licenses, and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos, and good will in any way relating to the Property.
- E. All water stock relating to the Property, all shares of stock or other evidence of ownership of any part of the Property that is owned by Borrower in common with others, and all documents or membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property.
- F. All products and proceeds of all of the foregoing.