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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
6/29/2005 14:48:30.55
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Janice M. Woolley, 11605 Miracle Hills Drive, #300, Post Office Box 542005, Omaha, NE 68154 (402) 492-9800

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is dated as of the 28 day of June, 2005, by GDR, L.L.C., a Nebraska limited liability company ("Borrower"), to the THE CITIZENS NATIONAL BANK OF WISNER, a national banking association, and its successors and assigns ("Lender").

PRELIMINARY STATEMENT

Borrower has, concurrently with the execution hereof, secured a loan from Lender in the amount of $1,440,000.00, evidenced by that certain Promissory Note dated of even date herewith (the "Promissory Note") executed by Borrower in favor of Lender and bearing interest and being payable as provided therein. The payment and performance of Borrower's obligations under the Promissory Note will be secured, in part, by that certain Deed of Trust, Security Agreement and Assignment of Rents dated of even date herewith (the "Deed of Trust") between Borrower and Lender encumbering the real property described as

See attached Exhibit A.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. **Definitions.** Capitalized terms used herein shall have the respective meanings given them in the Mortgage, unless otherwise defined herein.

2. **Assignment; Certain Rights of Borrower.** To further secure the prompt payment and performance of each obligation secured by the Deed of Trust (the "Secured Obligations"), Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under all leases, whether existing on the date hereof or hereafter entered into (including any extensions, modifications or amendments thereto) relating to the Real Property (the "Leases"), together with all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the rents, revenues, profits and income from the Mortgaged Property (as defined in the Deed of Trust), including those now due, past due or to become due. Borrower

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irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to take possession and control of the Mortgaged Property, pursuant to Borrower's rights as lessor under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the rents, revenues, profits and income thereof. It is intended by Borrower and Lender that this Assignment constitutes an absolute assignment and not merely an assignment for additional security. The consideration received by Borrower to execute and deliver this Assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower.

(a) Notwithstanding the foregoing, however, so long as no Event of Default (as defined in Paragraph 4 below) has occurred, Borrower shall have a revocable license to possess and control the Mortgaged Property and collect and receive all rents, revenues, profits and income. Upon the occurrence of an Event of Default, such license shall be deemed automatically revoked.

(b) Upon the occurrence of any Event of Default, Lender may, at any time upon such notice as is required by law, by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and control of the Mortgaged Property, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Mortgaged Property, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Mortgaged Property, execute or terminate contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed best to protect the security of this Assignment, and in Lender's or Borrower's name, sue for or otherwise collect such rents, revenues, profits and income from the Mortgaged Property as specified in this Assignment as the same become due and payable, including, but not limited to, rents then due and unpaid.

(c) All rents, revenues, profits and income collected shall immediately be held by Borrower as trustee for the benefit of Lender, only; provided, however, until an Event of Default has occurred, Borrower may use such funds in any manner not consistent with the terms of this Assignment. Borrower agrees that commencing upon the occurrence of such Event of Default, each tenant of the Mortgaged Property shall make its rent payable to and pay such rent to Lender (or Lender's agents) on Lender's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(d) In the event Lender elects to seek the appointment of a receiver for the Mortgaged Property upon Borrower's breach of any covenant or agreement of Borrower in this Assignment, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Mortgaged Property.

(e) All rents, revenues, profits and income collected subsequent to the occurrence of any Event of Default shall be applied at the discretion of, and in such order

as determined by, Lender to the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting such amounts, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Mortgaged Property and to the sums secured by this Assignment. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received.

(f) If the rents, revenues, profits and income from the Mortgaged Property are not sufficient to meet the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting the same, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Assignment. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the Default Rate provided by the Promissory Note.

(g) Any entering upon and taking possession and control of the Mortgaged Property by Lender or the receiver and any application of rents, revenues, profits and income as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided therein.

(h) Borrower hereby represents and agrees that it is and will be the sole owner of the entire landlord's interest (or tenant's interest in the case of Leases with respect to which Borrower is the tenant) in all existing Leases, subject to Permitted Encumbrances (as defined in the Deed of Trust), that Borrower has not executed any prior assignment of said Leases or rents, revenues, profits and income except those being subordinated hereto, that Borrower has not performed, and will not perform, any acts, or has not executed, and will not execute, any instrument that would prevent Lender from exercising its rights under this Assignment, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any of the rents of the Mortgaged Property for more than one (1) month prior to the due dates of such rents.

3. **Certain Agreements of Borrower.** Borrower hereby agrees as follows:

(a) If any of the Leases provide for a security deposit paid by the tenant thereunder to Borrower, this Assignment shall transfer to the Lender all of Borrower's right, title and interest in and to such security deposits; provided that, Borrower shall have the right to retain such security deposits so long as no Event of Default shall have occurred; and provided further that Lender shall have no obligation to any such tenant with respect to such security deposits unless and until Lender comes into actual possession and accepts control of such security deposits by notice to such tenant;

(b) Borrower shall not terminate any Lease (except pursuant to the terms of such Lease upon a default by the tenant thereunder), or grant concessions or modify or

amend any such Lease in any manner whatsoever other than in the ordinary course of business in accordance with good business practice for properties of the type and quality as the Mortgaged Property in Douglas County, Nebraska, without the prior written consent of Lender;

(c) Borrower shall not collect any rent more than one (1) month in advance date on which it becomes due under the terms of each Lease, except for bona fide security deposits.

(d) Borrower shall not discount any future accruing rent or discharge any lessee from their obligations under the leases other than in the ordinary course of business in accordance with good business practice for properties of the type and quality of the Mortgaged Property in Douglas County, Nebraska, after the occurrence of an Event of Default, Borrower waives any right of setoff against any tenant under the Leases;

(e) Borrower shall not execute any further assignment of any rent or any interest therein or suffer or permit any such assignment to occur by operation of law;

(f) Except with the prior written consent of Lender, Borrower shall not request, consent to, agree to or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Mortgaged Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(g) Borrower shall faithfully perform and discharge all obligations of the lessor or landlord under the Leases, and shall give prompt written notice to Lender of any notice of Borrower's default received from the tenant or any other person and shall furnish Lender with a complete copy of said notice. Borrower shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Leases. If requested by Lender, Borrower shall enforce any Lease and all remedies available to Borrower against the lessee in the case of default under such Lease by the tenant thereunder;

(h) Upon the request of Lender, Borrower shall promptly provide to Lender a true and correct copy of all existing Leases or other occupancy agreements with respect to the Mortgaged Property. All Leases or other occupancy agreements with respect to the Mortgaged Property in effect from time to time shall be deemed included in this Assignment as though originally listed herein, and the respective terms "Lease" and "Leases" as used herein shall include such leases or occupancy agreements and the term "lessee" used herein shall include the lessees or tenants thereunder; and

(i) Nothing herein shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking of actual possession of the Mortgaged Property pursuant to the powers granted herein, or to impose any liability or obligation on Lender under or with respect to the Leases. Borrower shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages that Lender may incur under

the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under the Leases or this Assignment provided, however, in no event shall Borrower indemnify Lender from or against any willful or grossly negligent act of Lender. Should Lender incur any liability, loss or damage under the Leases or under or by reason of this Assignment, Borrower shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and reasonable attorneys' fees incurred by Lender. All of the foregoing sums shall bear interest until paid at the Default Rate provided by the Promissory Note. Any rent collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

4. **Event of Default.** The following shall constitute an Event of Default hereunder:

(a) The occurrence of an Event of Default under the Promissory Note, the Deed of Trust, or any other "Loan Document," as defined in the Deed of Trust;

(b) If at any time any representation or warranty made by Borrower in this Assignment shall be or become materially incorrect;

(c) The breach of any agreement by Borrower under this Assignment after such notice as is otherwise required.

5. **Additional Rights and Remedies of Lender.** If an Event of Default occurs, Lender shall have the following rights and remedies, all of which are cumulative, in addition to all other rights and remedies provided under the Loan Documents, or any other agreement between Borrower and Lender, or otherwise available at law or in equity or by statute:

(a) Lender shall be deemed to be the creditor of each tenant in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting the tenant (without obligation on the part of Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein); and

(b) Lender shall have the right to assign Borrower's right, title and interest under this Assignment in any of the Leases to any subsequent holder of the Promissory Note or any participating interest therein or to any person acquiring title to the Mortgaged Property or any part thereof through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Lender.

6. **Additional Security.** Lender may take or release other security for the payment of the indebtedness secured hereby, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such indebtedness, without prejudice to any of its rights under this Assignment.

7. **Absolute Assignment; Release.**

(a) The assignment made hereby is an absolute and unconditional assignment of rights only, and not a delegation of duties. The execution and delivery hereof shall not in any way impair or diminish the obligations of Borrower under the provisions of each and every Lease nor shall any of the obligations contained in the Leases be imposed upon Lender. The assignment contained herein and all rights herein assigned to Lender shall cease and terminate as to all Leases:

(i) Upon the payment and satisfaction of all Secured Obligations; or

(ii) Upon the release of the Mortgaged Property subject to such Lease from the lien of the Deed of Trust covering such Mortgaged Property pursuant to the provisions of such Mortgage.

(b) It is expressly understood that no judgment or decree that may be entered on any debt secured or intended to be secured by this Assignment shall operate to abrogate or lessen the effect of this Assignment, but that the same shall continue in full force and effect as herein provided. The provisions of this Assignment shall also remain in full force and effect during the pendency of any proceedings for the foreclosure and/or sale of the Mortgaged Property, or any part thereof, both before and after sale, until the issuance of a deed pursuant to a decree of foreclosure and/or sale, unless all indebtedness and obligations evidenced and secured hereby are fully satisfied pursuant to paragraph (a) of this Section.

(c) In the event that this Assignment shall so terminate as to any Lease, Lender shall, upon the written request of Borrower, deliver to Borrower an instrument in recordable form releasing such Lease from this Assignment, and reassigning to Borrower the rights as to such Lease assigned hereby.

8. **Effect on Rights Under Other Documents.** Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of the Loan Documents. The right of Lender to collect the indebtedness secured hereby and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Mortgage or in any other document.

9. **Further Assurances.** Borrower hereby agrees that it shall, whenever and as often as it shall be requested to do so by Lender, execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, any and all such further conveyances, approvals, consents, memoranda of the subject matter hereof, duplicate originals hereof, and any and all other documents and to do any and all other acts as may be necessary or appropriate to carry out

the terms of this Assignment. This Assignment or a memorandum hereof may be recorded by Lender at any time.

10. **No Waiver.** A waiver by Lender of any of its rights hereunder or under the Leases or of a breach of any of the covenants and agreements contained herein to be performed by Borrower shall not be construed as a waiver of such rights in any succeeding instance or of any succeeding breach of the same or other covenants, agreements, restrictions or conditions.

11. **Marshaling.** Notwithstanding the existence of any other security interest in the Mortgaged Property held by Lender or by any other party, except as otherwise limited by applicable law, Lender shall have the right to determine the order in which any of the Mortgaged Property or any part thereof shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any party who now or hereafter acquires an interest in any of the Mortgaged Property and who has actual or constructive notice hereof hereby waives, to the extent permitted by law, any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

12. **Notices.** All notices, demands, requests, consents, approvals or communications required under this Assignment shall be in writing and shall be deemed to have been properly given if sent by hand delivery, overnight courier, or certified mail, postage prepaid, delivered to the parties at the following addresses:

If to Borrower:	GDR, L.L.C. c/o Eugene J. Graves 11920 Burt Street Omaha, NE 68154
If to Lender:	The Citizens National Bank of Wisner PO Box 490 Wisner, NE 68791-0490
With a copy to:	Janice M. Woolley Marks Clare & Richards, L.L.C. 11605 Miracle Hills Drive, #300 P.O. Box 542005 Omaha, Nebraska 68154-4487

or to such other addresses as are designated by notice pursuant to this Section.

13. **Enforcement; Expense of Litigation.** When an Event of Default shall occur under the Secured Obligations, or any part thereof, whether by acceleration or otherwise, Lender shall have the right to enforce the lien hereof for such Secured Obligations, or part thereof. In any suit to enforce any remedy of Lender under this Assignment, there shall be allowed and included as additional indebtedness in the decree for sale or other 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, and costs (which may be estimated as to items to be expended after entry of the decree) or procuring all such abstracts of title, title searches and examinations, 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 the value of the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Assignment, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Assignment or the Mortgaged Property, including probate and bankruptcy proceedings or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest thereon at the Default Rate set forth in the Promissory Note, and shall be secured by this Assignment.

14. **Counterparts.** This Assignment may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto, although it shall not be necessary that any signed counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument.

15. **Governing Laws; Severability.** This Assignment shall be governed by and construed under the laws of the State where the Real Property is located. In case any of the provisions of this Assignment shall at any time be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Assignment, and this Assignment shall be construed and enforced as if all such illegal, invalid or unenforceable provisions had never been inserted herein.

16. **Modification.** This Assignment may not be modified without the prior written consent of the Lender. The Leases may not be modified in any respect without the prior written consent of Lender.

IN WITNESS WHEREOF, Borrower has executed this Assignment on the date set forth in the acknowledgment attached hereto and effective as of the date first above written.

GDR, L.L.C. a Nebraska limited liability company,

By: _____
Eugene J. Graves, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 28 day of June, 2005, by Eugene J. Graves, Manager of GDR, L.L.C. a Nebraska limited liability company, on behalf of said company.

GENERAL NOTARY - State of Nebraska
DEBRA J. SAXTON
My Comm. Exp. Jan. 30, 2008

_____
Notary Public

EXHIBIT "A"

Legal Description

Lot 2 and 3, Torrey Square, a Subdivision in Douglas County, Nebraska.